



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (MD) No.711 of 2018(NPD)
and CMP(MD) No.3139 of 2018

S.Karthick

... Petitioner/4th Respondent/Third Party

-Vs-

Kubbaiyandi Devar (died)

1.Rohini Ammal
2.Ganesan
3.Moorthy
4.Marthupandi
5.Lakshmi
6.Ramathilagam
7.Pappathi
8.Santhi

... Respondents 1 to 8/Petitioners 1 to 9
/ Plaintiffs 1 to 9

Mahalakshmi Ammal (died)
Sivagnanam (died)
Selvaraj (died)

9.Kokila
10.Mehala
11.Ananthi

... Respondents 9 to 11 /Respondents 5 to 7
/ Third parties

PRAYER: Civil Revision Petition is filed, under Section 115 of Civil Procedure Code, against the fair and decreetal order dated 03.01.2018 passed in E.P.No.13 of 2016 in O.S.No.109 of 1981 on the file of the District Munsif, Vadipatti.

For Petitioner : Mr.R.Vijayakumar
For R1 to R6 : Mr.M.Lakshmi Mahendran

O R D E R

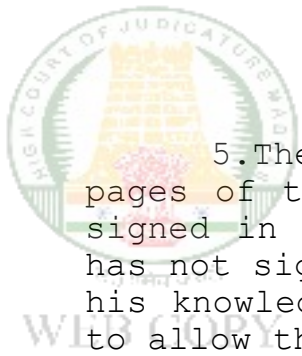
This Civil Revision Petition has been filed against the fair and decreetal order, dated 03.01.2018 passed in E.P.No.13 of 2016 in O.S.No.109 of 1981 on the file of the District Munsif, Vadipatti.

2. For the sake of convenience and easy understanding, the parties are referred to as per the rank mentioned in the Original Suit.



3.The learned counsel for the petitioner submitted that the petitioner is the son of Mahalakshmi Ammal (deceased), who was the second defendant in the suit. He further submitted that one Kubbaiyandi Devar (deceased) filed a suit in O.S.No.109 of 1981 on the file of the District Munsif, Madurai Taluk, for the relief of specific performance of a sale agreement, dated 30.09.1979 said to have been executed by one Sivagnanam (deceased), who was the first defendant in the suit. It was alleged in the plaint that pending sale agreement, the first defendant, Sivagnanam had executed a sale deed in favour of Mahalakshmi Ammal, Wife of Selvaraj. The said suit was dismissed by the trial Court on 04.01.1982. Against which, the plaintiff filed an appeal in A.S.No.42 of 1982 before the II Additional Sub Court, Madurai. On perusal of oral and documentary evidence, the First Appellate Court allowed the appeal on 02.07.1982. Aggrieved over the said Judgment, the original defendants filed S.A.No.1317 of 1982 before this Court. After perusing the oral and documentary evidence, the second appeal was dismissed by this Court on 16.12.1997, with a direction to the plaintiff to deposit a sum of Rs.10,000/- within a period of three months. He further submitted that the plaintiff/deed holder and the judgment debtor had died and the amount was not deposited within a stipulated time as fixed by this Court. In this circumstance, the legal heirs of the plaintiff filed C.M.P.No.5099 of 1998 before this Court, seeking extension of time for deposit of the said amount of Rs.10,000/-. However, the said application was pending till 2006, without any progress.

4.The learned counsel appearing for the petitioner further submitted that the original defendants had died and the legal heirs were impleaded in C.M.P.No.5099 of 1998. However, the legal heirs of the original defendants did not enter into any compromise with the legal heirs of the plaintiff. However, it seems that a compromise memo was presented before the Court as if it was signed by the legal heirs of the deceased original defendants. Based upon the said compromise memo, this Court passed a compromise decree on 05.04.2006, directing the legal heirs of the defendants to execute the sale deed with regard to western 48 cents instead of 90 cents, for which, the original decree was passed. But, the legal heirs of the original defendants were not appeared before the Court, at the time of recording the compromise. After a lapse of 10 years, the legal heirs of the plaintiff filed E.P.No.13 of 2016 praying the Court for execution of the sale deed. The said application was resisted by the defendants on the ground that there was no compromise between the parties and the compromise decree is not binding upon the legal heirs of the deceased defendant. After observing the facts and circumstances of the case, the Executing Court allowed E.P.No.13 of 2016 and directed the defendants to execute the sale deed on the ground that the Executing Court has no jurisdiction to entertain the plea raised by the defendants. In the same, the petitioner/defendant before this Court.



5.The main grievance of the petitioner is that out of three pages of the compromise recorded by this Court, the petitioner has signed in the first and third pages of the compromise memo and he has not signed in the second page. He further contended that without his knowledge that compromise memo was recorded and hence, he prays to allow this Civil Revision Petition.

6.On the other hand, the learned counsel appearing for the respondents submitted that the compromise memo was signed in the presence of the petitioner only. Inadvertently, the second page of the compromise memo was not signed. Therefore, at this stage, the petitioner cannot state that he has not signed in the compromise memo and the same is not sustainable. Hence, he prays to dismiss this Civil Revision Petition.

7.Heard the learned counsel appearing on either side and perused the materials available on record.

8. A perusal of record shows that the learned Executing Court has rightly rejected the contentions raised by the petitioner herein and has given a finding that as per compromise memo, the western portion of 48 cents was allotted to the respondents herein. Hence, the petitioner herein and other defendants in the suit are directed to execute the sale deed in respect of 48 cents, comprised in western portions to the respondents herein within two months from the date of the order. The only contention raised by the revision petitioner is that he has not signed in the compromise memo. However, he is admitting the fact that he has signed in the first and third page of the compromise memo. However, on perusal of the compromise memo, it appears that on behalf of the petitioner, the counsel has signed in all the pages and the petitioner has signed only the first and third page of the compromise memo. Be that as it may, in the Execution Proceedings the petitioner has raised a plea that he has not aware of the compromise memo and has not signed in it. It is seen that the compromise decree was passed as early as on 05.04.2006. If really the petitioner has any grievance against the compromise memo, he would have taken steps immediately, whereas he kept silent for long time and he raised a plea only at the time of filing the Execution Petition and has simply stated that he has not aware of the execution of compromise memo. All these explanations, cannot be accepted at this stage.

9.In view of the above, this Court does not find any valid reason to interfere with the order passed by the learned District Munsif, Vadipatti, in E.P.No.13 of 2016 in O.S.No.109 of 1981, dated 03.01.2018 and hence, this petition is liable to be dismissed.

Accordingly, this Civil Revision Petition is dismissed. No Costs.



Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

The District Munsif,
Vadipatti.

+1 CC to Mr.R.VIJAYAKUMAR, Advocate (SR-91271[F] dated 04/10/2019)

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03.10.2019

msa

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