

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.02.2020

Date of Verdict : 20.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.988 of 2004
and C.M.P.No.22170 of 2019

- 1.P.Eswaran (died)
- 2.Palaniammal
- 3.E.Babu Prakash
- 4.Selvi
- 5.Mohana
- 6.Ushadevi

....Appellants

(Appellants 2 to 6 brought on record as LR's of the deceased appellant viz., P.Eswaran vide order of court dated 03.02.2020 in CMP.No.25437 of 2019 in SA.No.988 of 2004)

Vs.

- 1.Chinnannaicker @ Chinna Naicker (died)
- 2.C.Nagarajan
- 3.Minor Velmurugan
Rep by father and guardian
C.Nagarajan
- 4.K.Balasubramaniam
- 5.Kanagam
- 6.Kalpana
- 7.M.Arulprasad
- 8.Thangammal @ Sivagami
- 9.Chinna Erusa Gounder
- 10.V.P.Thangaraj

...Respondents

(R1 - died, Second appeal stands disposed of between the appellant and the RR2 to 6 as per memo of compromise dated 05.11.2004 vide order of court 05.11.2004 made in SA.No.988 of 2004)

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 31.12.1998, in A.S.No.355 of 1997 on the file of the Principal District Judge, Erode, confirming the decree and judgment dated 01.07.1997 in O.S.No.37 of 1995 on the file of the Subordinate Court, Bhavani.

For Appellants : Mr.V.P.Sengottuvel
For Respondents
R1 : died

For R3 : Mr.V.Bhiman

R2 to R6 : Compromise vide court order
dated 05.11.2004

R7 to R10 : Not ready in notice - no
appearance

JUDGMENT

The civil miscellaneous petition in CMP.No.22170 of 2019 in S.A.No.988 of 2004 has been filed to recall the order passed in S.A.No.988 of 2004 dated 05.11.2004 on the joint compromise memo filed by the parties.

2. The learned counsel for the petitioner submitted that the petitioner is the third respondent in the second appeal. The plaintiff filed suit in O.S.No.37 of 1995 on the file of the Subordinate Court, Bhavani for specific performance on the strength of the sale agreement dated 01.07.1986. The said suit was dismissed and insofar as the advance amount of Rs.30,000/- is concerned, directed to refund with 12% interest. Aggrieved by the same, the plaintiff filed appeal suit in A.S.No.355 of 1999 before the Principal District judge, Erode. The defendants also filed cross objection, in which the appeal filed by the plaintiff was dismissed and the cross objection filed by the defendants was allowed and the judgment and decree insofar as the refund of advance amount was set aside. Aggrieved by the same, the plaintiff preferred second appeal before this Court in S.A.No.988 of 2004. In the said second appeal, without the knowledge of the petitioner and without even declaring him as major, since at the time of filing of the suit he was a minor, filed compromise memo, in which forged the signature of the petitioner and the second appeal was disposed of in respect of the respondents 2 to 6 as per the compromise.

2.1 He further submitted that the petitioner was shown as minor in the second appeal and as such the compromise memo has not been entered into with the leave of this Court in conformity of Order 32 Rule 7 (i) CPC. In fact, his sisters, namely R5 and R6 also did not sign any compromise memo and never appeared before this Court to enter into the compromise between the plaintiff and the defendants. Therefore, he prayed to recall the order dated 05.11.2004 passed by this Court in S.A.No.988 of 2004.

3. Per contra, the learned counsel for the plaintiff filed counter and submitted that pending this second appeal, the first respondent died and the respondents 2 to 6 have been impleaded as his legal heirs in the appeal. The plaintiff entered into a joint compromise memo with the defendants dated 26.01.2004 and all the parties concerned appeared before this Court. This Court recorded the compromise memo and disposed the second appeal insofar as respondents 2 to 6 are concerned. On the strength of the order passed by this Court, the plaintiff filed execution petition in E.P.No.16 of 2009 in O.S.No.37 of 1995 on the file of the Subordinate Court, Bhavani. In the said E.P., the petitioner herein was served with notice. In fact, the petitioner also filed his counter with false and frivolous allegations that compromise memo has been filed before this Court forging his signature and also he will take appropriate steps to recall the order passed by this Court by order dated 24.07.2012.

3.1 Further submitted that after due enquiry, the learned Subordinate Judge, Bhavani passed an order dated 17.09.2012 rejected the contention of the petitioner and directed to file draft sale deed and ordered for registration of sale by an order dated 29.10.2012, and the sale was registered in favour of the plaintiff, namely his legal heirs i.e. respondents 5 to 11 herein vide document No.3926 of 2012 in the Office of the Sub Registrar, Anthiyur. Thereafter, the respondents 5 to 11 became the absolute owners of the property and in fact, they also had taken possession of the said property. After a period of eight years, the present application has been filed to recall the order passed by this Court, that too under Order 32 Rule 7 read with 151 C.P.C. This petition itself is not maintainable, since the provision is not applicable to the petitioner and prayed for dismissal of the petition.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondents 10 to 14.

5. The plaintiff filed the suit for specific performance in O.S.No.37 of 1995 on the file of the Subordinate Court, Bhavani, which was dismissed. Insofar as the receipt of advance amount, the defendants were directed to refund the same. Aggrieved by the same, the plaintiff filed appeal suit in A.S.No.355 of 1999. In the said appeal suit, the defendants also filed cross objection. The appeal suit filed by the plaintiff was dismissed and the cross objection filed by the defendants was allowed. Aggrieved by the same, the plaintiff filed second appeal before this Court in S.A.No.988 of 2004. Pending this appeal, the parties amicably settled the issues and entered into joint compromise memo and filed the same before this Court. On receipt of the compromise memo and appearance of

parties concerned, this Court passed the order as follows:

"This second appeal coming on for hearing under the provision of Rule 11 of order XLI of schedule I of the code of Civil Procedure 1908 and in the presence of Mr.V.P.Sengottuvel, Advocate for the Appellant, and of Mr.Jayaganesan, Advocate for the respondents 2 to 6 and the respondents 7 to 10 not appearing in person or by Advocate and the first respondent having been reported dead and the appellant and the respondents 2 to 6 herein having entered into a compromise between themselves and having filed into court a Joint Memorandum of Compromise requesting the court to pass a decree in terms thereof and the Joint Memorandum of Compromise duly signed by the appellant and the Respondent 2 to 6 herein and by their respective counsel and upon perusing the grounds of Appeal and the Judgments and decrees of the Lower Appellate Court and the court of First instance and the Memorandum filed herein and this court while recording the said memorandum of compromise the original of which is annexed herewith made the following order:

"This second appeal is admitted to consider the following substantial question of law:

1.Whether the findings of the lower appellate court that Ex.A.2 would not save the suit from the law of limitation can be legally sustained?

2.R.1 died after the filing of the second appeal. His legal representative are shown to be R.2 to R.6. Mr.Jayaganesh, learned member of the bar is on record for them. He confirms that fact. The appellant in this appeal and respondents 2 to 6 have entered into a memo compromise which is duly signed by the appellant; his counsel and respondents 2 to 6 and their counsel. It evidences a compromise of the dispute between the appellant in this second appeal and the respondents 2 to 6. Accordingly, this second appeal stands disposed of between the appellant on the one hand and respondents 2 to 6 on the other hand as per the memo of compromise filed before this court. The second appeal survives for consideration against respondents 7 to 10. Notice to R7 to R10."

6. On the strength of the compromise decree, the plaintiff filed execution petition in EP.No.16 of 2009 and notice was ordered to the parties concerned. The petitioner herein also filed counter and he categorically stated that his signature was

forged and he never entered into joint compromise and he also stated that he will take necessary step to recall the order, by counter dated 24.07.2012. After considering the counter and due enquiry, the Subordinate Judge, Bhavani allowed the execution petition and ordered for sale. Accordingly, the sale was registered in favour of the plaintiff vide document No.3926 of 2012 in the file of the Sub Registrar, Anthiiyur. In fact, the possession was handed over to the plaintiff. The petitioner did not file any appeal against the order passed in E.P.No.16 of 2009. While being so, after seven years, the petitioner filed this petition to recall the order for the reason that at the time of filing the second appeal, he was a minor and without declaring him as major, forged his signature and filed compromise memo before this Court.

7. He further contended that his sisters' signature namely respondents 5 and 6 were also forged and entered into compromise memo. The petitioner though raised objection in the counter filed before the E.P. Court, he did not take any step to recall the order passed by this Court. Therefore, the trial court passed the order in E.P.No.16 of 2009. Subsequently, the sale was also over. It is also seen that on the date of compromise, namely on 05.11.2004, the petitioner was major. Admittedly his date of birth is 26.07.1980. Though the parties concerned did not take any step to declare him as major, he attained major even in the year 1998 itself, namely even before filing of the second appeal. He also engaged counsel to appear before this Court on behalf of him. When it being so, he duly engaged counsel to appear on behalf of him and also filed counter, he would have very well sought himself to declare as major before this Court. He failed to take any step to declare him as major before this Court. Further it is seen from the records, namely affidavit filed in support of the present application, memo of compromise and the counter filed in E.P.No.16 of 2009, his signature differs from each to each. Now he cannot challenge that the signature was forged by the other parties, that too after the period of 15 years from the date of compromise memo. Therefore, this petition is devoid of merits and liable to be dismissed. Accordingly, this civil miscellaneous petition is dismissed.

8. It is seen from the order dated 05.11.2004 passed by this Court, the main second appeal in S.A.No.988 of 2004 is pending insofar as the respondent 7 to 10. In view of the subsequent development, namely the sale deed executed in favour of the plaintiff by the defendants and registered as document No.3926 of 2012 in E.P.No.16 of 2009 and the possession of the

suit property was also handed over to the plaintiff, the second appeal in S.A.No.988 of 2004 is also closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

lok

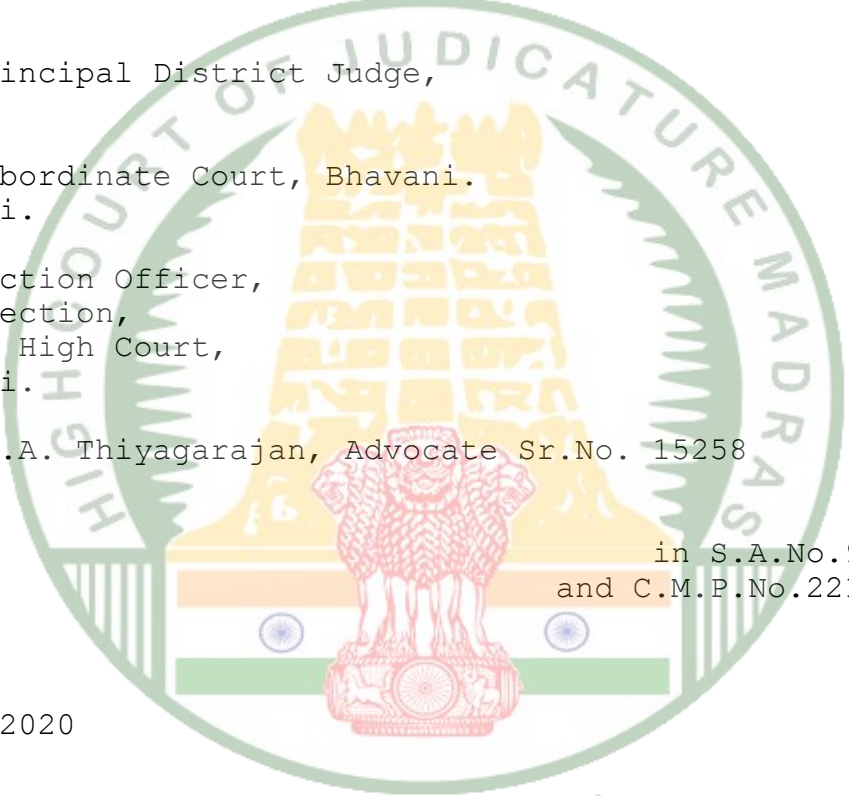
To

1. The Principal District Judge,
Erode
2. The Subordinate Court, Bhavani.
Chennai.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+lcc to Mr.A. Thiyagarajan, Advocate Sr.No. 15258

in S.A.No.988 of 2004
and C.M.P.No.22170 of 2019

SJ(CO)
KKV/17/07/2020



सत्यमेव जयते

WEB COPY