

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :14.12.2020

Pronounced on : .12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.(P.D).No.2712 of 2019

S.Sekar

...Petitioner

Vs

1.R.P.Dharmalingam

2.M/s Bhargav Foundations Pvt. Ltd.,

Rep by its Managing Director, M.Suresh

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order in I.A.No.3 of 2019 in O.S.No.13150 of 2010 in so far it relates to recording the memorandum of compromise with regards to E and F properties alone and record the compromise as entered into by the parties and consequently modify the Judgment and decree in O.S.No.13150 of 2010 before XVII Additional City Civil Court, Chennai.

For Petitioner : Mr.S.Ravee Kumar

For Respondents : Mr.Murali for R2

ORDER

This Petition has been filed to set aside the fair and decretal order in I.A.No.3 of 2019 in O.S.No.13150 of 2010 in so far it relates to recording the memorandum of compromise with regards to E and F properties alone and record the compromise as entered into by the parties and consequently modify the Judgment and decree in O.S.No.13150 of 2010 before XVII Additional City Civil Court, Chennai.

2.The suit in O.S.No.13150 of 2010 is filed by the petitioner for the relief of permanent injunction as against the defendants/respondents herein.

3.During the pendency of the suit, the parties arrived for an amicable settlement before the Mediation Centre.

4.The trial Court without considering the mediation report held between the parties, partially allowed the petition in I.A.No.3 of 2019 in O.S.No.13150 of 2010 dated 11.03.2019, for the E and F, plaint schedule properties alone.

5.Against the order of the trial Court, the petitioner has preferred the present Civil Revision Petition.

6.The learned counsel for the petitioner submitted that the petitioner herein has filed the suit in O.S.No.13150 of 2010 for the relief of permanent injunction, before the trial Court. During pendency of the case, the matter was referred to mediation and compromised. The recorded memorandum of compromise was placed before the trial Court along with petition in I.A.No.3 of 2019. The trial Court after considering the submission of the learned counsel for the parties recorded the compromise with respect to E and F, plaint schedule properties alone. With regard to item Nos.1 and 2 of plaint schedule properties, the trial Court refused to record the memorandum of compromise and dismissed. The order of the trial Court is unjust. As per the principles of Order 23 Rule 3, a compromise filed, need not be restricted to subject matter of the suit alone. When the compromise petition duly signed by the parties, the Court is bound to record the same and thus pleaded to set aside the order of the trial Court with regard to partial dismissal of compromise and allow the revision petition.

7.The 1st respondent appeared through his counsel and he has given up in the suit and therefore he has no objection. The 2nd

respondent/defendant signed the compromise and it is reported that he has no objection in recording the same.

8.Heard both sides and perused the materials available on record.

9.The petitioner herein has filed the I.A.No.3 of 2019 in O.S.No.13150 of 2019, to record the memorandum of compromise dated 26.09.2018. The petitioner filed the petition under Order 23 Rule 3 of CPC in I.A.No.3 of 2019. The suit was filed for permanent injunction against the defendants 1 and 2, with regard to the plaint schedule properties. During the pendency of the case, the parties approached the mediation centre and the dispute between the parties was settled between them. They arrived for the terms of compromise which was reduced into writing vide mediation report dated 26.09.2018. In their compromise the 1st defendant has not signed and he was given up by the plaintiff in the suit. The 2nd defendant alone signed the compromise memorandum dated 26.09.2018. The trial Court recorded the compromise with respect to items E and F of the plaint schedule properties alone. With regard to other properties the trial Court refused to record the compromise between the parties in the mediation centre as third parties interest may be involved. On perusal of the plaint

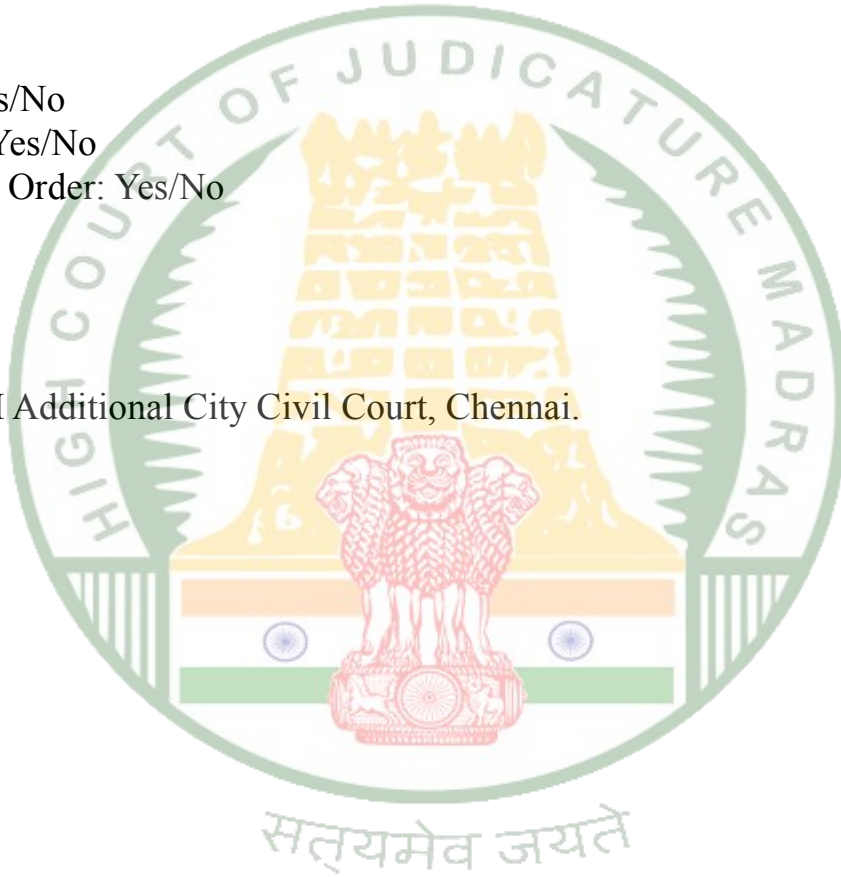
schedule properties, it is seen that there is a dispute between the defendant and the plaintiff with regard to the plaint schedule properties. There was a transaction with regard to plaint schedule properties between the parties. The plaint 1 and 2 schedule properties are subject matter of the dispute. In this regard, the parties arrived a compromise and the 1st defendant given up from the suit. The trial Court had not stated clearly the involvement of the third parties interest in the suit. It is just observed that there was a third party interest involved with respect to other properties, which is not supported with any reason and evidence. The agreement, compromise or settlement may relate to the whole suit or a part of the suit or it may also include matters beyond the subject matter of the suit. If they form consideration for the compromise of the subject matter of the suit, it can be recorded. Further a compromise filed under Order 23 Rule 3 of CPC need not be restricted to the subject matter of the suit. If the parties adjusted their differences between themselves, compromise can be recorded. Therefore, the order of the trial Court is hereby set aside with regard to rejected portion and the trial Court is directed to record entire compromise made between the parties and pass decree in accordance with law.

10.In this regard, the Civil Revision Petition is allowed and the order of the trial Court made in XVII Additional City Civil Court, Chennai, dated 11.03.2019 is set aside. No costs.

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Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

.12.2020

To
The XVII Additional City Civil Court, Chennai.



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V.SIVAGNANAM.J,

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