



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (MD)No.1866 of 2015

and

M.P. (MD)No.1 of 2015

M.Sinduja : Petitioner/Petitioner/7th Respondent/7th Defendant
.. Vs ..
Vijaya : Respondent/Respondent/Petitioner/3rd Defendant

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, praying to set aside the fair and decretal order dated 21.04.2015 in E.A.No.340 of 2010 in E.P.No.116 of 2008 in O.S.No.203 of 1991 on the file of Sub Judge, Srivilliputtur and allow this Civil Revision Petition.

For Petitioner : Mr.M.Ashok Kumar
For Respondent : Mr.Ramadurai
for M/s.A.R.M.Ramesh

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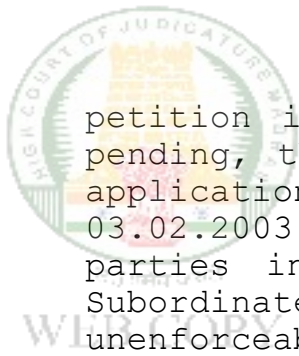
ORDER

This Civil Revision Petition is directed against the order of the learned Subordinate Judge, Srivilliputtur, in E.A.No.340 of 2010 in E.P.No.116 of 2008 in O.S.No.203 of 1991.

2.Heard the learned Counsel appearing for the petitioner as well as the learned Counsel appearing for the respondent and perused the materials available on record.

3.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

3.1.The revision petitioner is the seventh defendant in the suit in O.S.No.203 of 1991. The suit in O.S.No.203 of 1991 was filed by the respondent against several other co-owners including the seventh defendant for partition. A compromise decree was passed. As per the compromise decree, it is stated that the parties have divided the properties among themselves. It is also admitted that subsequent to the compromise, application was filed by the respondent/plaintiff for passing of final decree. Based on the final decree that was passed, the respondent filed execution



petition in E.P.No.116 of 2008. When the execution petition was pending, the revision petitioner/7th defendant in the suit filed an application under Section 47 C.P.C. to declare that the decree dated 03.02.2003 passed on the basis of the compromise reached by the parties in the suit in O.S.No.203 of 1991 on the file of the Subordinate Judge, Srivilliputtur, is null and void and unenforceable and prayed for dismissal of execution petition with costs.

3.2.Though the revision petitioner was a minor, it is not in dispute that she was represented by her mother and therefore, any decree passed based on the compromise signed by the petitioner's mother will be binding on the minor and the legal position need not be elaborated at this juncture. It is admitted in the affidavit filed in support of the petition that the petitioner was a minor and that she was represented by her mother. Since the petitioner's mother has signed the compromise memo without leave of Court, it is contended that the compromise signed by her mother without seeking permission of the Court is void. It is contended that the petitioner had no knowledge about the compromise deed and that she came to know about the same subsequently when notice in the execution petition was served on her. It is also stated that the properties allotted to the revision petitioner in the compromise memo is not equal to the properties allotted to other sharers.

4.All the grounds raised by the revision petitioner in the application filed by her under Section 47 C.P.C. are not substantiated. This Court and the Hon'ble Supreme Court has repeatedly defined the scope of proceedings under Section 47 of C.P.C. The petitioner challenges the compromise decree on the ground that the value of the properties allotted to her is not equal to the share allotted to the other sharers. The petitioner further states that the compromise memo signed by her mother without permission or leave of Court is not acceptable. In an application under Section 47 of C.P.C., the executability of the decree or matter relating to full satisfaction of the decree can be gone into. In relation to the satisfaction of the decree or executability of the decree, the Court can incidentally decide any other issue so as to take a decision under Section 47 of C.P.C. to avoid multiplicity of proceedings at the instance of any one of the parties to the suit. Except stating that the petitioner's mother did not understand the scope of partition and the value of properties, no other valid ground is raised. A compromise decree cannot be set at naught by mere asking. No appeal can be filed as against the compromise decree and therefore, it is not by mere asking an application under Section 47 can be allowed. In the present case, no serious allegation is made to invalidate the compromise as such. No fraud or incapacity of any one is pleaded so that the compromise decree can be challenged. Having regard to the admitted facts and sequence of events, this Court is able to see that the application is filed for an oblique motive to delay and protract the



proceedings, without any *bona fides*. Hence, this Civil Revision Petition is dismissed as the same is devoid of merits. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

SRM

To
The Judge,
Sub Court,
Srivilliputtur.

+1 CC to M/s.A.R.M. RAMESH, Advocate (SR-17502[F] dated 21/09/2020)

+1 CC to M/s.M. ASHOK KUMAR, Advocate (SR-17595[F] dated 21/09/2020)

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