

A.No.4224 of 2013
in
CS.No.122 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :: 17.02.2021	PRONOUNCED ON :: 10.03.2021
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CORAM ::

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.No.4224 of 2013
in
CS.No.122 of 2008

P. Poonkothai

... Applicant

Vs.

1. S. Seetharaman
2. S. Vijayakumar
3. P. Srinivasan
4. D. Rukmani
5. D. Balachandran
6. R. Ravi
7. R. Jayachandran
8. R. Balachandran
9. R. Ramesh
10. Prabhavathi
11. R. Thilagavathi
12. R. Jalandari
13. R. Varalakshmi
14. R. Vathsaladevi
15. R. Ramadevi
16. Kamalakannan
17. Minor Haish
18. Isari Ganesh
19. Pichaimuthu

... Respondents

Prayer: Application filed to set aside the compromise decree dated 01.11.2012 in CS.No.122 of 2008.

For Applicant : Mr. T.R. Rajagopalan, SC
for Mr. M. Kamalanathan

For Respondent : Mr. S. Rajasekhar

ORDER

The above application has been filed by the 14th defendant in the suit, seeking to set aside the Compromise Decree dated 1.11.2012 in C.S.No.122 of 2008.

2. A brief narration of the facts is essential for appreciating the point in issue.

3. The respondents 1 to 4 herein had filed the suit, C.S.No.122 of 2008, seeking partition of their 3/8th share in the suit schedule properties.

4. The admitted case of the parties is that the property belonged to one Duraisami, the father of the first defendant and the fourth plaintiff. Respondents 5 to 12/Defendants 2 to 9 in the suit are the children of the deceased son Ramachandran and Respondents 1 to 3/plaintiffs 1 to 3 and respondents 13 to 16/defendants 10 to 13 are the legal representatives of deceased daughter Krishnaveni.

5. The 5th respondent/first defendant had filed a written statement together with a counter claim seeking partition of his 1/4th share in the suit schedule property. The respondents 6 to 12 had contested the suit. However, ultimately, the parties, namely the respondents 1 to 16 herein, had entered into a memorandum of compromise on 31.08.2012 in and by which the properties were partitioned and each sharer was allotted a distinct share in the property.

6. The mode of division was also encapsulated in a sketch which was attached with the memorandum of compromise. This Court by

judgment dated 01.11.2012, was pleased to record the compromise and pass a decree in terms of the compromise.

7. The applicant herein had been arrayed as the 14th defendant in the suit since she had purchased 1820 sq.ft. in the first item of the suit schedule property. The applicant and respondents 17 and 18/defendants 14 to 16 who were the agreement holders/purchasers of certain portions of the suit property were not parties to the memorandum of compromise.

8. It is also to be mentioned that the applicant's daughter had originally entered into an agreement of sale deed 14.12.2004 with the fifth respondent in respect of the larger share in the first item of the suit schedule property. Thereafter, a portion of the property agreed to be sold was sold to the applicant vide a sale deed dated 12.05.2006. After the compromise decree was passed, the applicant's daughter had filed a suit in O.S.No.4523 of 2013 on the file of the XIX Additional City Civil Court, Chennai for specific performance. This suit was also

dismissed by a judgment and decree dated 07.11.2014, as against which, she had moved A.S.No.108 of 2015 before this Court.

9. The applicant has filed this application simultaneously on the ground that the decree has been obtained by suppression and is an abuse of process of law. This allegation is made by the applicant on two grounds:

a) That she was not made a party to the compromise and the sale in her favour has not been referred to.

b) She is shown to be represented by one M.Balasubramaniam, Advocate, whereas her counsel is one M.Kamalanathan. On the date on which the compromise has been entered into she has not been represented.

10. The defendants and plaintiffs have filed their respective counters in this application inter alia contending that the applicant has no *locus standi* to challenge the Memorandum of Compromise that was entered into between the sharers, since she herself is only a claimant

under one of the sharers, namely the fifth respondent. They would further submit that though a partition by metes and bound had not been entered into and specific and distinct shares allotted to parties, the applicant had entered into a sale deed to purchase a specified property with four boundaries without the same being allotted to the share of the 5th respondent.

11. The respondents would submit that the applicant was represented by her lawyer when the compromise had been recorded. They would also contend that there was no necessity to make her a party to the Compromise Memo since the settlement is only between the legal heirs of Duraisami and the applicant is only claiming under one of the sharers.

12. Mr. T.R. Rajagopalan, learned Senior Counsel, appearing on behalf of Mr. M. Kamalanathan, learned counsel, for the applicant would contend that despite impleading the applicant as the 14th defendant in the suit, the plaintiffs and defendants 1 to 13 did not

choose to include her as a party to the compromise and no notice has been issued to her in this regard. That apart, on the date on which, the compromise was recorded by the Court, there was no representation on behalf of the applicant. Therefore, the entire compromise has to be set aside and the suit had to be heard afresh.

13. Mr. Rajasekar, learned counsel appearing on behalf of the defendants would reiterate that the applicant is in no way concerned with the compromise since she is claiming under the fifth respondent and the fifth respondent has been allotted a share and from out of this, the applicant would be entitled to claim the extent that was sold to her. He would argue that the applicant on the date of the compromise decree was only entitled to an undivided share to an extent of 1870 sq.ft. since her vendor was only the owner of an undivided share in the properties. The parties had not partitioned the property on the day of the alleged agreement of sale and the date of the sale thereafter. Therefore, the first defendant had no right to sell the property describing four boundaries.

14. He would submit that the application is nothing but an abuse of process of law, since the same has been filed only at the behest of the applicant's daughter who had filed the suit for specific performance against the fifth respondent. The other respondents/defendants 1 to 13 have adopted the above arguments.

15. Heard the counsel and perused the records.

16. The applicant has challenged the compromise decree on the following grounds:

- a) She has not been made a party;
- b) Her lawyer has been wrongly described as one M.Balasubramanian, whereas he is the counsel for the defendants 2 to 9; and

c) her counsel had not appeared before this Court on the date on which the judgment, based on the Memo of Compromise, had been pronounced.

17. The applicant claims under the first defendant having purchased an extent of 1870 sq.ft. from him. The property in question admittedly belonged to late Duraisami and on his demise intestate, all his legal heirs are entitled to a share in the property. Further, the legal representatives of the said Duraisami had not partitioned the property by metes and bounds. The fifth respondent who was only having an undivided interest had entered into a sale deed with the applicant's daughter on 14.02.2004 with reference to an extent of 3270 sq.ft. in the suit schedule first item of property within four boundaries and out of this, 1820 sq.ft. has been sold to the applicant under a sale deed dated 12.05.2006, once again describing the property sold within the four boundaries. The fifth respondent's share has not been partitioned as on the date of the agreement and sale.

18. A perusal of the Compromise Decree would indicate that the 5th respondent has been allotted an extent of 2723 sq.ft. in Survey No. 98/2A3 besides additional extents in other survey numbers. It is in this

Survey Number that the 5th respondent had sold an extent of 1820 sq.ft. to the applicant. Therefore, the applicant is entitled to be allotted the extent purchased by her within the share that has now been allotted to the 5th respondent. Therefore, there is no necessity to include her as a party in the Compromise Memo. The next submission is that the counsel for the applicant did not have notice of the proceedings and had not appeared before the Court on the date on which the compromise was recorded. This Court had called for the cause list of the said date. A perusal of the cause list clearly indicates that the applicant's counsel's name had appeared in the list on the said date. Therefore, it is not correct to state that the applicant was not put on notice about the said Compromise or its being recorded by the Court. The mistake in the recording of the name is purely a clerical mistake and will not render the compromise and the decree passed thereon to be null and void.

19. I do not find any suppression on the part of the respondents 1 to 16 herein and no case has been made out by the applicant to set

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aside the compromise decree dated 01.11.2012. The application is therefore dismissed. No costs.

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Internet : Yes/No
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P.T. ASHA. J,

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