

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.02.2021
CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(NPD).No.646 of 2005
and C.M.P.No.4757 of 2005

Rajiv

... Petitioner

Vs.

1. M.Narayanan Nambiar (died)
2. K.M.Deviammal
3. Saraswathy
4. Pankajam
5. Mallika
6. Susila
7. Bhanumathi
8. Chitra
9. Vidya
10. Meera
11. Vinod
12. Manoj
13. Leena
14. Surendran
15. Shobana

(R3 to 15 brought on record as LR's of the deceased first respondent vide Court Order dated 01.02.2021 made in CMP.Nos.1054, 1055 and 1056 of 2012 in C.R.P.No.646 of 2005)

... Respondents

Prayer :- Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decretal order dated 16.08.2004 in I.A.No.73 of 2004 in O.S.No.595 of 2003 on the file of the Principal District Munsif, Namakkal.

For Petitioner : Mr.R.Natrajan

For Respondents

R1 & R2 : Died

For R 3 to R 14 : No appearance

For R15 & R16 : Mr.V.Vijaya Kumar

ORDER

This Civil Revision Petition is directed as against the fair and decretal order dated 16.08.2004 passed by the learned Principal District Munsif, Namakkal, in I.A.No.73 of 2004 in O.S.No.595 of 2003, thereby dismissing the petition filed by the petitioner for rejection of plaint.

2. The petitioner is the seventh defendant in the suit filed by the respondents 1 & 2 for declaration declaring that the decree passed in O.S.No.388 of 2002 on the file of the Sub Court, Namakkal dated 27.09.2002 is not binding on the respondents as a void one affected by fraud. The respondents are the plaintiffs in the suit in O.S.No.388 of 2002 for partition, on the file of the Sub Court, Namakkal. A compromise was arrived between the parties and on the basis of the compromise and in terms of the said compromise memo that too in the presence of all the parties, the suit was decreed by the learned Subordinate Judge, Namakkal. Now the said decree was challenged by way of the present suit on the ground that the decree was obtained on fraud and as such, the decree in O.S.No.388 of 2002 is not binding on the respondents herein.

3. The learned counsel appearing for the petitioner would submit that the respondents questioning the validity of the compromise decree passed in O.S.No.388 of 2002. After amendment of the Civil Procedure Code in the year 1976, under Order 23 Rule 3A, there is a bar from filing the suit, since the decree under challenged is based on the compromise entered between the parties. He further submitted that even then, the said decree can be challenged under Order 43 Rule 1 A of C.P.C., by way of appeal.

4. Heard, Mr.R.Natarajan, learned counsel appearing for the petitioner. The respondents 1 & 2 died and the legal heirs of the deceased respondents are brought on record. Though notices served to legal heirs of the deceased respondents 1&2 and their name printed in the cause list, no one appeared either by person or through pleader.

5. The only ground raised by the learned counsel appearing for the petitioner is that the respondents filed suit for partition and on the strength of the compromise entered between the parties, it was decreed by the judgment and decree dated 27.09.2002, on the file of the Sub Court, Namakkal. Again the said decree is under challenge in the present suit on the ground that the said decree was obtained by fraud and as such the same should be declared as null and void. Therefore, the petitioner filed petition to reject the plaint on the ground that the suit itself barred to challenge the compromise decree passed in O.S.No.388 of 2002. It is relevant to extract the provisions under Order 23 Rule 3A of C.P.C., as follows :-

"3-A. Bar to suit :- No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful"

Therefore, no suit shall lie to set aside the compromise decree on the strength of the compromise entered between the parties.

6. After the amendment of C.P.C., under Order 43 Rule 1A, there is a provision to challenge non-appealable order in appeal against decree. It is relevant to extract the provisions under Order 43 Rule 1-A of C.P.C., as follows :-

"1-A. Right to challenge non-appealable order in appeal against decree - (1) Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.

(2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been recorded."

It is clear that it is open to the parties to contest compromise decree, should be or should not be recorded, by way of appeal. Therefore, the suit filed by the respondents is barred under law and it cannot be sustained further and the order passed by the trial Court is perverse and liable to be set aside.

7. In view of the above discussion, this Civil Revision Petition is allowed and the order dated 16.08.2004 passed by the learned Principal District Munsif, Namakkal, in I.A.No.73 of 2004 in O.S.No.595 of 2003, is hereby set aside. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Principal District Munsif,
Namakkal.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1cc to Mr.R.Natarajan, Advocate SR.No. 5232

+1 CC to +1cc to Mr.R.Natarajan, Advocate SR.No. 5232 (02/07/2021)

C.R.P. (NPD) .No.646 of 2005
and C.M.P.No.4757 of 2005

A.SK(12.03.2021)



WEB COPY