



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	13.07.2021
Pronounced On	08.10.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.No.667 of 2012

and

M.P.No.1 of 2012

(Through Video Conferencing)

1.R.V.Dhandapani @ R.V.Ramesh (Deceased)

2.D.Chitra

3.D.Durgambiga

(Rep.by her Power of Attorney D.Chitra)

4.D.Sree Anuja

(Appellants 2 to 4 brought on record as LR's.

Of the deceased sole appellant vide order

dated 9.3.2018 made in CMP.Nos.20350 &

20351 of 2017)

... Appellants/LR of the Deceased
sole Appellant

vs.

1.R.Venugopal @ R.V.Gopal Chettiar(Died)

2.A.Roul

3.V.Usha

(R2 impleaded vide order of this Court dated

26.09.2019 made in CMP.No.18337/2019)

(R3 brought on record as LR of the deceased

R1 vide order of this Court dated 28.01.2020

made in CMP.No.20136/2019)

... Respondents/LR of the
Deceased Sole Respondent

Second Appeal filed under Section 100 of Civil Procedure Code, 1908 against the Judgment and Decree dated 26.04.2012 passed in A.S.No.2 of 2012 by the Additional Subordinate Judge,



Pondicherry by reversing the Judgment and Decree dated 17.11.2006 passed in O.S.No.1237 of 2006 by the II Additional District Munsif Court, Pondicherry.

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For Appellants : Mrs.Chitra Sampath, SC for
M/s.G.Sumithra

For R2 : Mr.R.Thiagarajan

For R3 : No Appearance

J U D G M E N T

This appeal has been filed by the 1st appellant (the sole plaintiff) in O.S.No.1237 of 2006. By the impugned judgment and decree dated 26.4.2012 the Appellate Court has allowed A.S.No.2 of 2012 filed by the 1st respondent (the sole defendant).

2. The 1st appellant (sole plaintiff) has since deceased during the pendency of this appeal. Hence, his interest is now represented by his other legal representatives in this appeal. The 1st respondent (the sole defendant) has also deceased during the pendency of this appeal. They are the son and the father.

3. The interest of the deceased 1st appellant (sole plaintiff) represented by his other legal representatives in this appeal. Similarly, the legal representatives of the 1st respondent though impleaded as the 3rd respondent by an order dated 28.01.2020 of this Court have not entered appearance. The 3rd respondent is not contesting this appeal.

4. For the sake of convenience, the ranks of the parties before the Trial Court are referred to avoid confusion. The 2nd respondent who got himself in this appeal by an order dated 26.9.2019. For the sake convenience, the 2nd respondent shall be also referred to as the buyer.

5. This appeal was filed by the deceased 1st appellant (the sole plaintiff in O.S.No.1237 of 2006) against the impugned judgment and decree dated 26.4.2012 in A.S.No.2 of 2012 passed by passed by the Appellate Court.

6. The said appeal was filed by the deceased 1st respondent (the sole defendant) before the First Appellate Court against the judgment and decree dated 17.11.2006 in O.S.No.1237 of 2006 of the Trial Court. The First Appellate Court has



allowed the said appeal by way of remand.

7. The 2nd respondent is a purchaser of Item No.1 of the suit schedule property from the sole defendant. The 2nd respondent claims to have purchased Item No.1 of the suit schedule property from the sole defendant pursuant to an award dated 25.1.2008 in a Lok Adalat conducted by the Pondicherry Legal Services Authorities.

The deceased defendant had allegedly executed a sale deed dated 12.2.2008 in favour of the 2nd respondent to sell the suit schedule property. Later, a sale deed was registered for sale of Item No.1 of the suit schedule property in favour of the 2nd respondent pursuant to an award dated 25.1.2008 in a Lok Adalat conducted by the Pondicherry Legal Services Authorities.

9. The contest in this appeal is between the legal heirs of the deceased plaintiff and the 2nd respondent, the subsequent purchaser of item No.1 of the suit schedule property.

10. The Trial Court had earlier decreed O.S.No.1237 of 2006 filed by the plaintiff by its judgment and decree dated 17.11.2006 which has been reversed by the First Appellate Court.

11. O.S.No.1237 of 2006 was field before the 2nd Additional District Munsif Court at Pondicherry (Trial Court) to declare that the suit schedule properties were purchased from and out of the income derived from the sale of ancestral property pursuant to a partition deed dated 28.9.1954 and to restrain the deceased defendant from alienating and/or encumbering the suit schedule property and/or from disturbing the peaceful possession and enjoyment of the suit schedule property Item No.1 of the plaintiff in any manner.

12. The records of lower Court indicates that in the written statement, the deceased defendant had practically submitted to a consent decree by agreeing to the contention of the deceased plaintiff. The written statement merely consisted of 3 paragraph which read as under:-

"1.The defendant herein humbly submits before the Hon'ble Court that he is not having any serious objection in respect of the averments contained in the plaint in page Nos. 2 to 13 and as well as the documents filed by him which are detailed in page Nos.13 & 14 of the plaint.

2. The defendant further submits that he has no objection in granting the relief or according with the prayers of the plaintiff as prayed by him in pages 11 and 12 of the plaint.



3. The defendant further states that the suit may be decreed in favour of the plaintiff without costs".

13. The Trial Court decreed the suit as prayed for vide judgment and decree dated 17.11.2006 in O.S.No.1237 of 2006. The deceased defendant (1st respondent) thereafter filed a Review Application No.1318 of 2008 under Section 151 of CPC before the Trial Court to set aside the Judgment and Decree dated 17.11.2006 and to stay the operation of the judgment and decree dated 17.11.2006 in O.S.No.1237 of 2006 passed by the 2nd Additional District Munsif Court at Pondicherry (Trial Court).

14. The Review Application No.1318 of 2008 was dismissed by the Trial Court by an order dated 25.2.2011. Thereafter, the deceased defendant filed A.S.No.2 of 2012 before the First Appellate Court namely the Additional Sub Court to set aside the judgment and decree dated 17.11.2006 in O.S.No.1237 of 2006 passed by the Trial Court.

15. Vide impugned judgment and decree dated 26.4.2012, the 1st Appellate Court has set aside the judgment and decree dated 17.11.2006 passed by the Trial Court in O.S.No.1237 of 2006 and has remanded the case back to the Trial Court, namely, the 2nd Additional District Munsif Court at Pondicherry.

16. Meanwhile, the plaintiff had filed E.P.No.118 of 2008 under Order 21 Rule 32 of C.P.C to prosecute and punish the defendant. The 2nd respondent was also a respondent in E.P.No.118 of 2008.

17. Assailing the impugned judgment and decree passed by the First Appellate court vide judgment and decree dated 26.4.2012 remitting the case back to the Trial Court, the learned Senior counsel appearing for the appellants submits that the said court committed a cardinal error in not only entertaining A.S.No.2 of 2012 against the judgment and decree dated 17.11.2006 passed by Trial Court in O.S.No.1237 of 2006 but has also committed another error by remanding the case back to the said court for a fresh Trial contrary to the provisions of the CPC and contrary to well settled principle of law.

18. Learned Senior counsel for the appellants submits that no appeal was maintainable against a consent decree. It is submitted that the remedy if any, that was available to the defendant was to approach the Trial Court under Order 23 Rule 3 of CPC. It is submitted that no appeal was maintainable under Section 96 (3) of the Civil Procedure Code against a consent decree.



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19. In this connection, the learned Senior counsel appearing on behalf of the appellants placed reliance on the following decisions:-

" i. Pushpa Devi Bhad (Dead) Through L.R.Sadana Rai (Smt.) vs. Rajinder Singh and Others, 2006(5) SCC 566.

ii. Daljit Kaur and another vs. Muktar Steels Private Limited and Others, 2013(16) SCC 607.

iii. Triloki Nath Singh vs. Anirudh Singh (Dead) Through Legal representatives and Others, 2020 (6) SCC 629."

20. Defending the impugned judgment and decree, the learned counsel for the 2nd respondent - purchaser of item No.1 of the suit schedule properties submitted that the said O.S.No.1237 of 2006 was decreed based on the endorsement made in the plaint by a counsel who was not the counsel on record for the deceased defendant.

21. It is therefore submitted that the suit was decreed without complying with the mandatory procedures contemplated under provisions of Order 23 Rule 3 of CPC.

22. The learned counsel for the 2nd respondent submits that page No.9 of the plaint narrates to the strained relationship between the plaintiff and the defendant. The learned counsel for the 2nd respondent further submits that the defendant was aged about 79 years on the date of the filing of the suit and there were several suits pending between the parties, and they had traded police complaints against each other.

23. The learned counsel for the 2nd respondent also further submitted that the Trial Court ought to have been vigilant as the deceased defendant had not appeared in person before the Trial Court before passing one so-called consent decree was passed.

24. He submits that Review Petition No.1318/2008 in O.S No.1237/2006 filed by the defendant was also dismissed on 25.2.2011 and therefore the deceased defendant was left with no other option but to file A.S.No.2 of 2012.

25. Learned counsel for the 2nd respondent submits that the fraudulent consent judgment and decree dated 17.11.2006 obtained from the Trial Court was correctly set aside and the



case was remanded back to the Trial Court for a fresh Trial.

26. It is further submitted that the 2nd respondent was not a party to the litigation. He came to know about the pendency of this second appeal sometime during the year 2019 and thus filed CMP No.18337 of 2019 in SA No.667 of 2012 before this Court for impleading himself as a second respondent in the present second appeal and the same was allowed to be impleaded on 26.9.2019.

27. It is further submitted that the sale consideration paid to the deceased defendant was Rs.32,00,000/- (Rupees Thirty Two Lakhs only). It is submitted that the 2nd respondent is doing Garlic business from the property since then. The 2nd respondent herein was also having a telephone connection at the premises. It is submitted that the Revenue records were also mutated and electricity connection for the property also stand in the name of the 2nd respondent and was also paying property tax after transfer of ownership in his name for the property situated at 110, MG Road, Puducherry-1. (Item 1 of the suit schedule property).

28. It is submitted that during the pendency of this appeal before this Court, the 2nd respondent had filed the suit in O.S No.1148 of 2019 on the file of the II Additional District Munsif, Puducherry and that a suit was pending.

29. The Learned Senior counsel of the appellants however submits that it was dismissed on 26.9.2018. Copy of the E-court suit status was filed during hearing. Learned counsel for the appellants submits that nothing survives and therefore the second appeal has to be dismissed as infructuous since the suit itself was dismissed by the Trial Court on 26.9.2018.

30. Learned counsel for the 2nd respondent submitted that the above second appeal is not at all maintainable against an order of remand since only CMA has to be filed in view of the clear-cut provisions of Order 43 Rule 1 (u) of CPC. The second appeal has to be dismissed as not maintainable.

31. The learned counsel for the 2nd respondent referred to the decision of the Hon'ble Supreme Court reported in Jegannathan vs Raju Sigamani reported in 2012(3) CTC 410 (SC) :: (2012) 5 SCC 540 for the proposition that against a remand order passed only a civil miscellaneous appeal under Order 41 Rule 23-A is amenable to Appeal. He refers to the Order 43, Rule 1(u) of CPC.



32. He has also referred to the decision of the Gujarat High Court reported in Laxmanbhai Govindbhai Solanki vs. Amrutbhai Govindbhai Solanki, 2019(2)GLR 1138. He submits that ratio laid therein squarely therein applies to the present case also. He submits that since the second appeal itself was not maintainable, other points need not be gone into in the present appeal.

33. He further submits that this second appeal is not maintainable as the contesting appellant has died and therefore it has become infructuous. It is submitted that since no substantial questions of law involved in the present appeal, this appeal is liable to be dismissed even otherwise in terms of the decision of the Hon'ble Supreme Court in- Santosh Hazari vs Puroshattam Tiwari (2001) 3 SCC 179.

34. It is submitted that the judgment and decree of the Trial Court was vitiated as the deceased defendant had not authorised or submitted to a decree. It is submitted that the deceased plaintiff (1st appellant) played fraud on the Court by filing a written statement by obtaining signature from the deceased defendant (1st respondent) taking advantage of the family condition.

35. He submits that there was no estoppel as so-called consent of the deceased defendant was obtained by playing fraud on the deceased defendant before the Trial Court. It is further submitted that the deceased defendant had also not appeared before the Trial Court in person when the suit was decreed based on the fraud played by the parties. The learned counsel for the 2nd respondent also relied on the decision of the Hon'ble Supreme Court in " Byram Pestonji Gariwala vs. Union Bank of India and Others, 1992(1) SCC 31"

36. I have considered the arguments advanced by the learned senior counsel for the appellants(legal heirs of the 1st appellant-deceased plaintiff) and the 2nd respondent. I have also perused the impugned Judgment and Decree passed by the Trial Court.

37. This appeal was no admitted when it was listed for admission. Notice of Admission was ordered on the respondent. Pending appeal both the appellant and the defendant died. Hence, they are represented by their legal heirs. The 2nd respondent is the purchaser of one of the suit schedule properties. The suit filed by the plaintiff (1st appellant) against the defendant (1st respondent) was decreed by the Trial Court.



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38. The following substantial questions of law arise for consideration in the factual background of the case:-

"a) Whether the Lower Appellate Court was right in entertaining the appeal against a consent decree?

b) Whether the Lower Appellate Court was right in ignoring the findings of the learned Trial Court while decreeing the suit?

c) Whether the Lower Appellate Court was right in exercising its jurisdictions moreso when the Trial Court had dismissed the application for review in Review Application No.1318/2008?"

39. Order 23 Rule 3 of CPC deals with a compromise of suit. Proviso to Order 23 Rule 3 states that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question. However, no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

40. By an amendment to the Civil Procedure Code (Amendment) 1976 w.e.f. 01.02.1977, the legislature introduced Rule 3-A to Order 23 of CPC. After the introduction of Order 23 Rule 3-A, institution of a suit to set aside a decree on the ground that the compromise on which decree is based was not lawful.

41. Under Section 96(3) of the CPC, no appeal lies against a decree passed by a Court with the consent of the parties. In Pushpa Devi Bhagat Vs Rajinder Singh (2006) 5 SCC 566 the court has also recognized this principle. Para 17 from the said judgment reads as under:-

17. The position that emerges from the amended provisions of Order 23 can be summed up thus:

(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3) CPC.

(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the



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deletion of clause (m) of Rule 1 Order 43.

(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3-A.

(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 Order 23.

Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21-8-2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27-8-2001) filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by the second defendant was not maintainable, having regard to the express bar contained in Section 96(3) of the Code.

42. The Hon'ble Supreme Court has also explained the difference between first part and second part of Rule 3 to Order 23 of CPC. In Pushpa Devi Bhagat Vs Rajinder Singh (2006) 5 SCC



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566, the relevant portion of the decision reads as under:-

19. What is the difference between the first part and the second part of Rule 3? The first part refers to situations where an agreement or compromise is entered into in writing and signed by the parties. The said agreement or compromise is placed before the court. When the court is satisfied that the suit has been adjusted either wholly or in part by such agreement or compromise in writing and signed by the parties and that it is lawful, a decree follows in terms of what is agreed between the parties. The agreement/compromise spells out the agreed terms by which the claim is admitted or adjusted by mutual concessions or promises.

43. The Hon'ble Court thus held that parties thereto can be held to their promise(s) in future and performance can be enforced by the execution of the decree to be passed in terms of it. As far as, the second situation, it observed as under: -

"19. On the other hand, the second part refers to cases where the defendant has satisfied the plaintiff about the claim. This may be by satisfying the plaintiff that his claim cannot be or need not be met or performed. It can also be by discharging or performing the required obligation. Where the defendant so "satisfies" the plaintiff in respect of the subject-matter of the suit, nothing further remains to be done or enforced and there is no question of any "enforcement" or "execution" of the decree to be passed in terms of it."

44. The illustration given by the Hon'ble Supreme Court for the two situations in where a suit is filed or recovery of a sum of rupees one lakh. The two situations were illustrated follows:-

First Situation.	Second Situation.
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Parties may enter into a lawful agreement or compromise in writing and signed by them, agreeing that the defendant will pay the sum of rupees one lakh within a specified period or specified manner or may agree that only a sum of Rs.75,000 shall be paid by the defendant in full and final settlement of the claim. Such agreement or compromise will fall under the first part and if the defendant does not fulfill the promise, the plaintiff can enforce it by levying execution.	On the other hand, the parties may submit to the court that the defendant has already paid a sum of rupees one lakh or Rs.75,000 in full and final satisfaction or that the suit claim has been fully settled by the defendant out of court (either by mentioning the amount paid or not mentioning it) or that the plaintiff will not press the claim. Here the obligation is already performed by the defendant or the plaintiff agrees that he will not enforce performance and nothing remains to be performed by the defendant. As the order that follows merely records the extinguishment or satisfaction of the claim or non-existence of the claim, it is not capable of being "enforced" by levy of execution, as there is no obligation to be performed by the defendant in pursuance of the decree. Such "satisfaction" need not be expressed by an agreement or compromise in writing and signed by the parties. It can be by a unilateral submission by the plaintiff or his counsel. Such satisfaction will fall under the second part. Of course, even when there is such satisfaction of the claim or subject-matter of the suit by the defendant and the matter falls under the second part, nothing prevents the parties from reducing such satisfaction of the claim/subject-matter, into writing and signing the same.
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Where the matter falls under the first part, there is a promise or promises agree to be performed or executed and that can be enforced by levying execution.	Where the matter falls under the second part, it is sufficient if the plaintiff or the plaintiff's counsel appears before the court and informs the court that the subject-matter of the suit has already been settled or satisfied.
The agreements or compromises falling under the first part can only be by an instrument or other form of writing signed by the parties.	There is no such requirement in regard to settlements or satisfaction falling under the second part.
The difference between the two parts in this: where the matter falls under the second part, what is reported is a completed action or settlement out of court putting an end to the dispute, and the resultant decree recording the satisfaction is not capable of being enforced by levying execution.	

45. The Hon'ble Supreme Court in Pushpa Devi Bhagat vs Rajinder Singh 2006 (5) SCC 566 further observed as under:-

While agreements or compromises falling under the first part can only be by an instrument or other form of writing signed by the parties, there is no such requirement in regard to settlements or satisfaction falling under the second part. Where the matter falls under the second part, it is sufficient if the plaintiff or the plaintiff's counsel appears before the court and informs the court that the subject matter of the suit has already been settled or satisfied.

46. A reading of Order 23 Rule 3 and the illustration given by the Hon'ble Supreme Court, is inspired from the underlying principle in Section 65 of the Indian Contract Act, 1872.

47. In Triloki Nath Singh vs Anirudh Singh(Dead) (2020) 6 SCC 629 it was held that "Finality of decisions is an underlying principle of all adjudicating forums. Thus, creation of further litigation should never be the basis of a compromise between the parties. Order 23 Rule 3-A put a specific bar that no suit shall lie to set aside a decree on the ground that the compromise on



which the decree is based was not lawful. The Scheme of Order 23 Rule 3 CPC is to avoid multiplicity of litigation and permit parties to amicably come to a settlement which is lawful is in writing and a voluntary act on the part of the parties. The Court can be instrumental in having an agreed compromise effected and finality attached to the same. The Court should never be party to imposition of a compromise upon an unwilling party, still open to be questioned on an application under the proviso to Order 23 Rule 3 CPC before the Court".

48. In *Kishun alias Ramkishan vs Behari* (2005) 6 SCC 300 it was held that no appeal is provided after 01.02.1977, against an order rejecting or accepting a compromise after an enquiry under the proviso to Order 23 Rule 3, either by Section 104 or by Order 43 Rule 1 of the Code. Only when the acceptance of the compromise receives the imprimatur of the court and it becomes a decree, or the court proceeds to pass a decree on merits rejecting the compromise set up it becomes appealable, unless of course, the appeal is barred by Section 96(3) of the Code.

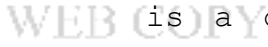
49. It further held that "When there is a contest on the question whether there was a compromise or not, a decree accepting the compromise on resolution of that controversy, cannot be said to be a decree passed with the consent of the parties". Therefore, the bar under Section 96(3) of the Code could not have application. It further, held that an appeal and a second appeal with its limitations would be available to the party feeling aggrieved by the decree based on such a disputed compromise or on a rejection of the compromise set up.

50. It therefore held that a proper enquiry as to whether there was a compromise or an adjustment of the dispute, in terms of the Proviso to Order 23 Rule 3 of the Code is warranted.

51. In *Byram Pestonji Gariwala vs Union Bank of India* 1992 1 SCC 31, in paragraph no.39 the court had held that it has always been universally understood that a party can always act by his duly authorized representative.

52. If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorization by vakalatnama, act on behalf of his client.

53. It further held that the legislature intended to make such a fundamental change even at the risk of delay, inconvenience and needless expenditure, it would have expressly



54. The Hon'ble Supreme Court in Jagannath vs Raju Sigamani 2012 (3) CTC 410 (SC) : 2010 5 SCC 540 held that there is a difference between maintainability of an appeal and the scope of hearing of an appeal. The High Court failed to keep in view this distinction and wrongly applied the case of Narayanan in holding that Miscellaneous Appeal preferred by the Appellant was not maintainable.

56. The counsel for the defendant appears to have made an endorsement stating that he had no objection for granting the relief. The decree records the following:-

57. At the 1st hearing of the suit, the court shall, after reading the plaint and the written statements, if any, and after examination under Rule 2 Of Order 10 and after hearing the parties or the pleaders ascertain upon what materials what propositions of fact or law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend. This is evident from a plain reading of Order 14 Rule 1 (5) of the CPC. The court also is not required to frame and record issues where the defendant at the 1st hearing of the suit makes no difference.

59. In the facts of the present case, the deceased defendant had earlier filed a review application before the Trial Court. It was rejected by the Trial Court on the ground of limitation by holding that the review application was barred by law. It was not disposed on merits.



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60. The defendant thereafter filed A.S.No.2 of 2012 before the Appellate Court. It was allowed by the Appellate Court by setting aside the judgment and decree dated 17.11.2006 for testing the case on merits whether the decree passed by the Trial Court.

61. Both the plaintiff and the defendant have died during the pendency of this appeal. They are now represented by their legal representatives. After the Trial decreed the suit, the defendant had sold Item No.1 of the Suit Schedule property to the second respondent at Old No.50, New No.110 measuring an extent 1 Acre 43 cent stories building, ward 'C' Block No.10, T.S.No.96 R.S.No.239 in O.S.No.1237 of 2006 pursuant to an award in the Lok Adalat.

62. During the pendency of the appeal, the deceased plaintiff had also filed an application under the Order 21 Rule 32 of CPC to punish the defendant for willful disobedience of the Judgment and Decree of the Trial Court and to detain the defendant/ respondent in a civil proceeding. However, it was not pursued without any seriousness.

63. Order 23 Rule 3A of the CPC specifically bars a subsequent suit while Section 96(3) bars an appeal. The question to be answered is whether decree of the Trial Court can be said to be a decree passed by Courts under Order 23 Rule 3 of the CPC.

64. However, if it is a decree under Order 23 Rule 3 of the CPC, an appeal with its limitation is maintainable as held in Kishun alias Ramkishan vs Behari (2005) 6 SCC 300. When there is a contest on the question whether there was a compromise or not, a decree accepting the compromise on resolution of that controversy, cannot be said to be a decree passed with the consent of the parties.

65. It has been held that, the bar under Section 96(3) of the Code could not have application. An appeal and a second appeal with its limitations would be available to the party aggrieved by the decree based on such a disputed compromise or on a rejection of the compromise set up.

66. Since the deceased defendant has questioned the consent given in the written statement, it was incumbent on the part of the Trial Court have examined same when review was filed, the defendant should have filed an appeal against the order dismissing the review application. However, since the application was filed belatedly, the court rejected the application for review. This exercise would have been carried out by the Trial Court, when both the plaintiff and the defendant were alive.



67. It cannot be said that the decree passed by the Trial Court was a consent decree merely because the written statement was filed by the defendant accepting to the case of the plaintiff unless the Trial Court had examined the same. The Trial Court ought to have been cautious before rushing decreeing in the suit considering the allegations in the plaint filed by the deceased plaintiff before the Trial Court. After having decreed the suit, the Trial Court ought to have examined whether indeed there was any foul play by the deceased plaintiff when the review application was filed by the deceased defendant.

68. This would require a proper re-consideration by the Trial Court. Therefore, while upholding the judgment and decree of the appellate court in interfering with the judgment and decree of the Trial Court, a liberty given to the deceased defendant (now represented by his L.R's) to file a fresh written statement straightaway cannot be accepted.

69. It is for the Trial Court to ascertain whether the written statement filed that was indeed signed by the deceased defendant and whether the counsel who appeared before the Trial Court in person who consented for a decree to be passed was indeed the Counsel on record appointed and nominated by the deceased defendant.

70. Since, this exercise was not carried out by the Trial Court when the review application was filed by the deceased defendant, this appeal is partly allowed by upholding the impugned judgment and decree remitting the case back to the Trial Court to ascertain that whether the written statement filed that was indeed signed by the deceased defendant and whether the counsel who appeared before the Trial Court in person when consent decree was passed was the Counsel on record, appointed and nominated by the deceased defendant.

71. As far as the rights of the 2nd respondent purchaser is concerned, it is for the 2nd respondent to work out his remedy in accordance with law to perfect his title.

72. The substantial question of law is thus answered partly in favour of the appellant. The Trial Court is therefore directed to examine the records available before it and come to an independent conclusion.

73. In case, if the Trial Court finds that there was any foul play in securing a consent decree, the judgment and decree of the Trial Court shall stand declared as null and void, in which case, the 2nd respondent is given liberty to file written statement to defend his interest in the suit schedule property, which was transferred by the deceased defendant to be



2nd respondent pendente lite.

74. On the other hand, in case the Trial Court comes to a conclusion that there was no foul play and the consent decree was properly passed based on the endorsement made by the Counsel on record for the deceased defendant, the Trial Court shall confirm the judgement and decree, in which case, it is for the 2nd respondent purchaser to work out his remedy independently against the legal representatives of the deceased plaintiff and the defendant in the manner known to law.

75. This second appeal stands partly allowed with the above observation. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Additional Subordinate Judge,
Pondicherry .
2. The II Additional District Munsif Court,
Pondicherry.
- 3.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.R.Thiagarajan, Advocate SR.No.53081

+1cc to Mrs.G.Sumitra, Advocate SR.No.53041

S.A.No.667 of 2012
and M.P.No.1 of 2012

BR(CO)
GN(14/02/2022)