



CRP (PD) No.2692 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

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and CMP No.19797 of 2021

Thandavarayan

... Petitioner

Vs

1. Dhanalakshmi

2. Bhuvaneswari

... Respondents

Prayer: The Civil Revision petition filed under Section 227 of the Constitution of India, against the fair and decreetal order, dated 19.08.2021 passed in I.A.No.2 of 2021 in O.S.No.780 of 2017 passed by the II Additional Subordinate Judge at Salem.

For Petitioner : Mr.D.Gopinathan

ORDER

This revision is directed against an order, dismissing an application filed by the petitioner under Order VII rule 11 (d) of C.P.C., on the ground that the suit is barred under Order XXIII Rule 3 (A) of C.P.C.,

2. The original suit in O.S.No.780 of 2017 was filed by the



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plaintiffs seeking to set aside the decree that was passed on the basis of the compromise in O.S.No.89 of 2006. The suit in O.S.No.89 of 2006 was one for partition of the estate of one Archunan. A compromise decree came to be passed in the said suit on the basis of the compromise memo filed by the parties on 22.03.2017. On 17.11.2017, the plaintiffs in the present suit who are the legal heirs of one Suryanarayanan, who happened to be the 1st defendant in the said suit, sought for setting aside the said decree, claiming that the compromise decree was obtained by fraud. According to the plaintiffs, the said Suryanarayanan and his counsel Mr.V.Subramanian did not appear before the Court on the date when the compromise decree was passed. According to the plaintiffs, Suryanarayanan was impersonated by another person and a new counsel counsel had appeared for him. It is also claimed that the land that is classified as Pormaboke was allotted to Suryanarayanan under the said compromise. On the above pleadings, the plaintiffs pray for setting aside the compromise.

3. The defendants resisted the suit. The 8th defendant filed an



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application under order VII Rule 11 seeking rejection of the plaint on the ground that it is barred by law.

4. The learned Subordinate Judge, Salem, who heard the application held that the bar imposed under Section 23 Rule 3 A does not apply since the plaintiffs are seeking to impugn the compromise on the ground that it is a fraudulent one. On the above conclusion, the learned trial Judge dismissed the application. Hence this revision.

5. I have heard Mr.D.Gopinathan, learned counsel appearing for the petitioner.

6. Mr.D.Gopinathan, learned counsel appearing for the petitioner would vehemently contend that a third party cannot impugn a compromise decree by way of separate suit. I am unable to agree with the said statement. In the case on hand, the plaintiffs in O.S.No.780 of 2017, claimed a right over the property under two documents which were executed by Suryanarayanan, even before filing the suit in O.S.No.89 of 2006.



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Therefore, the validity of the compromise entered into between Suryanarayanan and the other parties in O.S.No.89 of 2006, after Suryanarayanan has lost title to the property by execution of the settlement deeds in favour of the present plaintiffs, itself is doubtful. Apart from that the pleading raised by the present plaintiff that the said Suryanarayanan did not appear before the Court on the date when the compromise is recorded and his regular counsel Mr.V.Subramanian who appeared in the suit also did not appear, raises a considerable doubt regarding the very recording of the compromise.

7. In an application under Order VII Rule 11 of C.P.C., it is settled law that, the Court has to assume that the pleadings are true. The Court cannot go into the correctness in the pleading in the plaint on the basis of the averments made in the written statement while considering an application under Order VII Rule 11 of C.P.C., The learned counsel would invite my attention to the decision of the Division Bench of the Gujarat High Court to contend that even a third party can file an application to set aside the compromise decree. I am unable to agree with the said contention.



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The plaintiffs in O.S.No.780 of 2017 are not third parties and they are legal heirs of one of the parties who had entered into the compromise. Once fraud is pleaded and relevant pleadings are also made, the Court has to decide the issue and as such the suit cannot be thrown at initial stage as it is not barred under Order XXIII Rule 3 A. In my considered opinion, the bar enacted under Order 23 Rule 3 A is only with reference to legality of the terms of the compromise. It will not extend to protect a compromise which were obtained by playing fraud. Hence, I do not see any reason to interfere with the dismissal of the application by the trial Court. The Revision therefore fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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vum

Index: Yes/No

Speaking order / Non speaking order



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R.SUBRAMANIAN, J.

vum

To:

1. The II Additional Subordinate Judge,
Salem.
2. The Section Officer,
VR Section,
Madras High Court,
Chennai.

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