

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.3940 of 2017

and

CMP.No.18425 of 2017

Rahamathunisha @ Mohamuda Nachial ... Petitioner

Vs.

1. Mohamed Farook

2. Mathina Beevi @ Mathina Begum

3. Mohamed Yousuf

4. Dowlathunisa

5. Iynujariya

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and final order of District Judge, Karaikal dated 12.09.2017 made in I.A.No.153/2015 in O.S.No.14 of 2007.

For Petitioner : Mr.S.Sounthar

For Respondents : Mr.P.J.Anitha (for R1)
: Mr.R.Sunil Kumar (R2, R3 & R5)
: Notice Served (for R4)

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.153/2015 in O.S.No.14 of 2007 dated 12.09.2017 on the file of the learned District Judge, Karaikal, thereby, dismissing the petition seeking decree on the basis of the terms of compromise dated 27.01.2015.

2. The petitioner is the third defendant in the suit filed by the first respondent herein for partition and separate possession of the properties. Thereafter, the suit was decreed as prayed for by the judgment and decree dated 18.11.2010. The petitioner filed a petition to modify the decree and sought for another preliminary decree in I.A.No.720 of 2012. While pending the said application, all the parties entered into compromise on 27.01.2015 and all the parties have agreed to the terms of the compromise and signed on 02.02.2015 before the Lok Adalat. Even then, the compromise memo was not recorded and they have not appeared before the Lok Adalat. Therefore, the petitioner was constrained to file a petition under Order 23 Rule 3 of the Code of Civil Procedure seeking decree on the basis

of the terms of the compromise signed by the parties. While pending the said application, the first respondent herein filed counter and he reiterated the terms of the compromise and he also stated that no compromise was signed on 27.01.2015. However, he filed a memo stating that he withdrew the counter filed by the first respondent and he also entered into witness Box and deposed that he has no objection to decree the suit as per the compromise dated 27.01.2015. Thereafter, the first respondent was present before the Court below and he also reiterated the above fact from the compromise. Therefore, the Court below dismissed the petition for the reason that the parties are not having intention to compromise the matter and they have also reiterated from the compromise.

3. The learned counsel for the petitioner submitted that when the petition is filed under Order 23 Rule 3 of the Code of Civil Procedure seeking decree on the basis of the compromise memo, the Court has to adjudicate the issue as to whether the parties have agreed with the terms entered in the compromise or not. It cannot be dismissed merely on the fact that the parties reiterated the compromise entered between them. The Court is bound to record the same and adjudicate the compromise. In this regard,

he relied upon a judgment of this Court reported in AIR 1983 Mad 372 (***P.S.S.Somasundaram Chettiar -vs- R.Sathappan & Ors***), wherein this Court has held as follows:-

“26. After making reference to the above Privy Council decisions, it has been held by the Bombay High Court in Mirsrilal v.Sobhachand, AIR 1956 Bom 569 that the Court has power under Rule 3, where an agreement or compromise is denied, to decide whether as a fact, the alleged agreement or compromise was made, and if it is satisfied that it was made to record it, and after such satisfaction the Court is further required to satisfy itself that there is a lawful agreement adjusting the suit, especially where a plea of undue influence is raised. In para 5 at page 571, the two questions enunciated by us under Order XXIII, Rule 3 have been stated as follows:-

“The Court has in recording a compromise to consider two questions: (i) whether there has been an agreement adjusting the dispute in suit and (ii) whether the agreement is lawful agreement.”

27. For the above principle reliance has been placed also in a case in Rama Shanker v. 3rd Additional District Judge, Basti, AIR 1983 All 152 - One of the contentions raised before the Allahabad High Court was that once the compromise is repudiated by the other party the Court should have relegated the petitioner to a civil suit. Rejecting such

contention it was held in para 26 at page 158 that simply because one of the parties to the compromise chooses to repudiate the compromise, it does not mean that the Court before which an application is made for recording a compromise under, O.23, R.3, C.P.C must stay its hands and relegate the parties to a regular civil suit. In the case before the Allahabad High Court, the party who attacked the compromise was permitted to let in evidence in support of the plea that the compromise ought not to be recorded because it was obtained by fraud. The above view of the Allahabad High Court is clear that a party, who moves the Court to record a compromise, must satisfy the Court, when the same is repudiated by the other party.

32. Accordingly, we answer the reference that the first limb of Rule 3, Order 23 of the C.P.C. envisages an enquiry being made by the Court before recording any agreement or compromise on the application of one party for being satisfied itself whether the suit has been adjusted wholly or in part outside the Court, when such agreement is attacked as one that has been obtained by fraud, undue influence and coercion. Any observation made by us in the course of Court judgment will not prejudice the parties in the disposal of the application on merits by the Court which will dispose of the same. With the above observations, we direct that the applications be enquired into and disposed of on merits. There

will be no order as to costs.”

4. This Court in the above case held that Order 23 Rule 3 of the code of Civil Procedure envisages an enquiry being made by the Court before recording any agreement or compromise on the application of one party for being satisfied itself whether the suit has been adjusted wholly or in part outside the Court, when such agreement is attacked as one that has been obtained by fraud, undue influence and coercion.

5. In the case on hand, though compromise was entered into between all the parties, the third respondent herein reiterated the compromise memo entered between them and denied the compromise. Though the first respondent herein filed counter and reiterated the compromise, thereafter, he withdrew the counter and also entered into the box and stated that he accepted the compromise and no petition for the compromise decree was filed. Therefore, the Court below, to decide the question as to whether compromise alleged by one party was in short, entered into or not, is a substantial right conferred on the party and the same cannot be denied. Further, the Court below has to adjudicate as to whether the parties are

willing to enter into the compromise or not by letting evidence.

6. In view of the above discussion, this Civil Revision Petition is allowed and the order passed in I.A.No.153 of 2015 in O.S.No.14 of 2007 dated 12.09.2017 is set aside. The matter is remanded back to the Court below for adjudication as contemplated under Order 23 Rule 3 of the Code of Civil Procedure and thereafter, the Court below is directed to dispose of the same within a period of twelve weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. No costs.

19.03.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

1. The District Judge, Karaikal.
2. The Section Officer,
V.R.Section, High Court of Madras.

G.K.ILANTHIRAIYAN,J.

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