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C.M.P.Nos.15542 & 15544 of 2021

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in
S.A.No.714 of 2012

C.V.KARTHIKEYAN, J.

These applications have been filed seeking to set aside the modified compromise decree dated 13.11.2014 in S.A.No.714 of 2012 in so far as allotment of 'A' Schedule property to the plaintiff is concerned.

2.It must be stated that the petitioner herein was neither the plaintiff nor the defendant in the suit, neither an appellant nor the respondent in the First Appeal and nor even the appellant or the respondent in the Second Appeal. He can be termed as a purchaser of a litigative property. In other terms he is a speculative purchaser. The fact is that his vendor was also a speculative purchaser having purchased the property during the pendency of the litigation.

3.Realising that it might be difficult for her to hold on to the property in view of the litigations which swung like a pendulum from the High Court herein in Second Appeal to the Hon'ble Supreme Court and back again to the High Court and back again knocking the doors of the



Hon'ble Supreme Court, she had washed her hands off and sold the property to the petitioner herein.

4. Her earlier efforts to set aside the Compromise decree before this Court failed. She filed a Special Leave Petition. That was dismissed, at the time of admission. She then filed a Review Petition before this Court. That was dismissed. She again went back to the Hon'ble Supreme Court and again filed a Special Leave Petition. That was again dismissed. Now, the Purchaser/the present petitioner had once again launched himself on another venture seeking to set aside the compromise decree.

5. In *Arivandandam Vs. T.V. Satyapal and Anr.*, reported in (1977) 4 SCC 467, the Hon'ble Supreme Court had very clearly held that re-litigation of the same issue, cannot be encouraged and as a matter of fact, passed a dictum against the Munsif Court to nip such efforts in the bud and not allow the litigation to grow to be re-agitated once again.

6. In the said decision, the father had contested the eviction proceedings, lost it, appealed against it, lost again, moved a revision, suffered rejection of the revision petition and after that, his son re-



litigated by filing a suit seeking that the eviction order has been obtained by fraud and collusion. In the said decision, the Honourable Supreme

Court had stated as follows:-

“2. Here is an audacious application by a determined engineer of fake litigations asking for special leave to appeal against an order of the High Court on an interlocutory application for injunction. The sharp practice or legal legerdemain of the petitioner, who is the son of the 2nd respondent, stultifies the court process and makes a decree with judicial seals brutum fulmen. The long arm of the law must throttle such litigative caricatures if the confidence and credibility of the community in the judicature is to survive. ..”

7.This practice of re-agitation and re-litigating the same issue before two different forums has been very strongly commented by the Honourable Supreme Court in the decision reported in (1998) 3 SCC 573, *K.K.Modi Vs. K.N.Modi*. The Honourable Supreme Court had stated as follows:-

“ 44. One of the examples cited as an abuse of the process of the court is re litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re litigate the same issue which has already been tried and decided earlier against him. The re agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of the court. A proceeding being filed



for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.”

Again the Hon'ble Supreme Court had come down very heavily on the parties who re-agitate the same issue.

8. The same dictum and preposition of law had been reiterated with much advantage by this court in (2005) 4 LW 206 (*The Member Concern Department of Post, Government of India, Ministry of Communication Vs. Annapoorni and others*), which is a case where the property of the Respondents in the civil revision petition had been acquired by the Postal Department for construction of a Post Office and a Postal Department Administration Block. Numerous litigations were filed by the wife and the family members of the land owner entwining the Postal Department in a number of litigations, which had been filed with



the purpose of insisting re-conveyance of land or getting more rent or to just keep the litigation alive. In such circumstances also, this court affirmed that re-litigation at various forums with respect to the same subject matter would amount to abuse of process of Court and law.

9. The petitioner herein is not a bonafide purchaser. His vendor herself had purchased the property *lis pendence*. She had in her Sale Deed to the present petitioner had the temerity to state that there were no litigations pending on the property when there were actually litigations pending. The petitioner then purchased the property. He claims innocence and ignorance of the litigations and seeks indulgence. But a closure perusal shows that he was well aware of the litigations and had still purchased the property.

10. The Sale Deed by which he had purchased the property had an indemnity clause. If he has grievances he can always enforce that indemnity clause as against his vendor instead of coming back to this Court seek to reopen the compromise decree.



11. The brief facts would indicate that the suit which had been filed in the year 1977 seeking partition and separate possession of the properties into two equal halves, had been meandering around the Courts and the plaintiffs have not been permitted to enjoy the fruits of such a decree.

12. A preliminary decree was passed. Pending the preliminary decree, sale of the properties started. This brought in third parties to the litigation and they then a gain sold the properties. But however, the plaintiffs and the 12th respondent, who had been allotted 'A' and 'B' Schedule properties which are the only two schedule property available quite apart from 'C' and 'D' Schedule properties which are on the rear side and not now under litigation, are the original sole surviving litigants.

13. It is the contention of the learned counsel for the petitioner that the learned Single Judge in the Second Appeal, had, on an erroneous consideration, thought that 'A' Schedule had been allotted to the plaintiffs whereas the petitioner's vendor claimed the rights over the 'A' Schedule property. Her application seeking recognition of such a right had been



dismissed by the Court.

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14. The Hon'ble Supreme Court had refused to interfere with that order. A learned Single Judge of this Court had refused to review the order. The Hon'ble Supreme Court had again refused to interfere with that particular order. Now she has set up the present petitioner to once again re-agitate the said issue.

15. The learned counsel brought to the notice of this Court a Judgment of the Hon'ble Supreme Court reported in (2006) 5 SCC 566 *Pushpa Devi Bhagat (Dead) Through LR.Smt.Sadhna Rai vs Rajinder Singh & Others*.

16. The Hon'ble Supreme Court was concerned with an Order under XXIII Rule 3 (a) of the Code of Civil Procedure. Order XXIII CPC relates to withdrawal of suit and also compromise of suits. A Suit can be withdrawn with permission to file a fresh suit on the same cause of action. However parties with a little more wisdom can also enter into a compromise and seek recording of such compromise. Issue of abandonment of a particular right also creeps in under Order XXIII of the



Code of Civil Procedure. This is a composite procedure and once the parties have applied their mind and have taken a conscious decision to withdraw a particular suit with liberty to file a fresh suit or to enter into a compromise or to abandon their claim or part of their claim, they cannot be permitted to once again re-litigate on the same issue.

17.The learned counsel had relied on the following portion:

"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 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."

18.The Hon'ble Supreme Court had again stressed the very same aspect limiting the right to re-agitate an issue which had been entered into a compromise.

19.The fact that the vendor of the present petitioner had challenged the compromise decree, is a fact which can be taken note. What is more important is that the Courts have successively dealt with that issue and concurrently rejected such attempts to reopen the compromise decree. The petitioner herein cannot claim a larger right. As a matter of fact his vendor herself was not permitted to claim any right over that of the



original plaintiffs.

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20. Section 52 of the Transfer of Property Act, 1882 stipulates that during the pendency of a litigation, a party can deal with the property which they had a right to deal with, but they must have a small courtesy to seek the leave of the Court. If they do not seek leave of the Court, then they have to suffer the consequences. The vendor herein had suffered such consequences during her repeated attempts to reopen the compromise decree again.

21. The petitioner, as a purchaser, can be branded only as speculative purchaser of the litigative property with knowledge of the pendency of the litigation. If at all, the vendor had made a false representation that no litigations were pending, then it is for the petitioner to work out his remedy with the vendor in terms of the Sale Deed wherein, she had agreed and undertaken to indemnify the present petitioner for any such undertaking being found false. But he cannot claim a share in the property which had been allotted to the plaintiffs who have been litigating for nearly more than 4 decades as on date. They must be permitted to enjoy the fruits of a decree atleast after one



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generation of litigation. I do not find any merit in the present petition and the same is liable to be dismissed and is accordingly dismissed.

22. In view of the above, the Civil Miscellaneous Petition is dismissed with costs to the plaintiffs and the 12th respondent herein. Consequently, the connected application for stay is also dismissed.

27.07.2022

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