



C.R.P.No.369 of 2020
and C.M.P.No.1960 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.10.2022

DELIVERED ON : 08.11.2022

CORAM :

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.369 of 2020

and

C.M.P.No.1960 of 2020

Vijaya

... Petitioner

Vs.

1. Malliga
2. P. Pichai
3. P. Natarajan
4. Saroja
5. Pushpa
6. D. Rajendiran
7. N. Ramasamy
8. N. Panneerselvam
9. N. Vinoth
10. N. Sasikumar
11. P. Kumaran
12. V. Chitra
13. R. Pushpalatha

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 CPC against the fair and decreetal orders dated 22.07.2019 passed in I.A. No.339 of 2018 in O.S. No.67 of 2013 on the file of the Principal District Judge, Vellore, Vellore District.



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For Petitioner : Mr. P. Jagadeesan
For R1 : No appearance
For R6 & R13 : Mr.C.P. Hem Kumar
for Ganesh & Ganesh

ORDER

The present Civil Revision Petition is filed against the fair and decreetal orders dated 22.07.2019 passed in I.A. No.339 of 2018 in O.S. No.67 of 2013 on the file of the Principal District Judge, Vellore.

2. For the sake of convenience the parties are referred to as per their ranking in the trial court in the Original Suit and in appropriate places, their ranking in the present petition would be indicated.

3. The revision petitioner is the 6th defendant in the suit in O.S. No.67/2013 on the file of the Principal District Judge, Vellore. The suit was filed by one Malliga. The said Malliga and the 3rd defendant are the daughters of one Ponnusamy Mandiri and Mangathai alias Mangai Ammal of Brahmmapuram Village, Katpadi Taluk, Vellore District. The



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defendants 1 & 2 and one Duraisamy are the sons of this couple. The said Duraisamy expired leaving behind defendants 4 to 6 as his legal heirs. Items 1 & 2 in the schedule of properties were owned by Mangathai @ Mangai Ammal while items 3 to 13 were owned by Ponnusamy Mandiri. The said Ponnusamy Mandiri died intestate on 28.11.1984 and his wife Mangathai died intestate on 10.12.2003. The contention of the plaintiff in the Original Suit was that after the demise of their parents the plaintiff and the defendants 1 to 3 and the said Duraisamy were each entitled to 1/5 share in the suit properties and since Duraisamy also expired, the defendants 4 to 6 who were his legal heirs were entitled to his 1/5 share. The plaintiff, in order to prevent the other defendants from fraudulently creating any settlement deed/release deed to deprive her of her share of the property, filed this suit for partition of the suit property into 5 equal shares and to allot one such share to her and for mesne profits apart from claiming permanent injunction restraining the defendants from alienating the suit properties.

4. The Principal District Judge, Vellore, during the course of



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trial referred the suit to Lok adalat for settlement on 27.06.2018 which was returned by the District Legal Service Authority, Vellore, on 14.07.2018 with an endorsement as not settled. Subsequently, on 18.07.2018 based on a joint compromise memo duly signed by all the parties, a compromise decree was passed by the Court on the same day i.e 18.07.2018.

5. Thereafter, the 6th defendant in the suit filed an I.A. No.339/2018 in O.S. No.67 of 2013 before the Principal District Judge, Vellore, contending that her thumb impression on the joint compromise memo was obtained by her counsel making her believe that she would be eligible for a share in the suit properties. However, she came to know later that she was not allotted any share much against her desire. According to her, she is one of the legal heirs of her father Duraisamy who himself was eligible for 1/5th of the share of her grand parents or in other words late Duraisamy's parents who were the original owners of the suit properties. In such circumstances the 6th defendant has filed the I.A. seeking for condonation of delay of 38 days in filing the petition under



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Order IX Rule 13 CPC to set aside the *ex parte* decree allegedly passed in O.S. No.67/13. According to her the Court passed the *ex parte* decree on 18.07.2018 and that she is neither aware of any joint memo of compromise nor about the case being referred to the Lok adalat before settlement.

6. The trial court in I.A. No.339 of 2018 has observed as under:

"On analysing the points put forth by both counsels and on perusal of records , it is crystal clear that the matter has been settled in Lok Adalat on 14.07.2018 in the presence of all parties including this petitioner. Then, based on Lok Adalath settlement, the final decree was passed by this court on 18.07.2017. In such situation of this petitioner appeared and acknowledgements, the settlement was made and final decree was passed. Hence, now, he cannot question the same by way of this petition. In spite, he could take legal steps. So, this petition has no merits and deserves to be dismissed."

However, this was apparently based on a compromise decree passed on



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18.07.2018 by the then Principal District Judge, Vellore in which it was stated thus:

"During the course of trial, the suit was referred to Lok Adalath. The case was settled at Lok adalath. Suo moto hearing advanced. All parties present and joint compromise memo filed. Final Decree passed as per the terms of the joint memo. That the Joint Compromise Memo shall stand part and parcel of the Final Decree.

7. Nevertheless a clarification was sought by this Court from the Principal District Judge, Vellore, as to whether the matter was settled in Lok adalat or in the Court for which a detailed report was sent by the learned Principal District Judge on 30.09.2022 clarifying that the settlement was not arrived at the Lok adalat by the District Legal Service Authority, Vellore and it was referred back to court in which a joint compromise memo was filed and recorded on 18.07.2018 and based on which final decree was passed.

8. A perusal of the joint compromise memo shows that the



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present petitioner had affixed her thumb impression on the same. She has not disputed that she had affixed her thumb impression. A careful perusal of joint compromise memo filed on behalf of the parties to the suit also shows that amongst the 3 children of the deceased Duraisamy (D4 to D6) only D5 got a share from items 3 to 15 in the suit properties as per partition agreement (koorchit) dated 15.04.1988. The 4th and 6th defendant did not get any share even as per the earlier koorchit.

9. Be that as it may, it is seen from the records that the learned Principal District Judge had recorded the compromise memo dated 18.07.2018 in the open court and also recorded the presence of all the parties to the compromise. The 6th defendant did not raise any objection at that juncture and in fact she had agreed for the terms of compromise recorded by the court. Now she has contended that she was unaware of the contents/terms of compromise and that the order was passed *ex parte*. It is settled law that a person of full age and understanding cannot be heard to say that she/he subscribed her/his signature/thumb impression in a document without reading the contents thereon. The petitioner did not



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In fact in the orders dated 18.07.2018 there is a typographical error giving an impression that the matter was settled in the Lok adalat when in fact the matter was not settled in Lok adalat and was settled in Court subsequent to return of records by District Legal Service Authority with an endorsement "Not settled". The preamble portion of the orders also reads thus:

"This suit coming before me on this day for hearing in the presence of Thiru.K. Solmuthu Azhagan and Thiru.C.Salai Manimiyan, learned counsels for the plaintiff, and Thiru.M.Kulothungan, learned counsel for D1, D2 and D7 to D12, Thiru.S.Gunasekaran, learned counsel for D3 and Thiru.V. Chandrasekaran learned counsel for D6, D3 and D6 called absent hence set exparte. Thiru.V.Varadharajan learned counsel for D4,D5 and D13, joint compromise memo filed by both parties, memo recorded and upon perusing the entire case records, this court delivered the following:"

This is of course shabbily drafted by the then Principal District Judge.

Taking advantage of this portion, the petitioner had filed a petition Under



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Order IX Rule 13 CPC along with an application in I.A. No.339/2018 under Section 5 of the Limitation Act to condone the delay of 38 days in filing the petition under Order IX Rule 13 CPC. The learned counsel for the petitioner would contend that the explanation for the delay of 38 days was satisfactorily given but despite that the petition was dismissed. The petition filed under Order IX Rule 13 itself is not maintainable as D6 was present before the Court on 18.07.2018. In the circumstances, the Civil Revision Petition fails and is dismissed.

10. In the result,

- i. the Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is dismissed.
- ii. The fair and decreetal orders of the learned Principal District Judge, Vellore, dated 22.07.2019 passed in I.A. No.339 of 2018 in O.S. No.67 of 2013 , is upheld.

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Index: Yes/No
Internet: Yes/No

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bga

R. HEMALATHA, J.
bga

To,

The Principal District Judge, Vellore.

Pre-delivery order in
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