



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	16.02.2022
DELIVERED ON	28.02.2022

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CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD)No.203 of 2022

and

C.M.P. (MD)No.902 of 2022

S.Sankara Subramanian ...Petitioner/Petitioner/1st Defendant

Vs.

1.S.Pitchiah ...R-1/R-1/Plaintiff
S.Ramaiah (Since Deceased)
S.Thirikooda Rajappan (Since Deceased)
...Deceased/R-2 & R-3/D-2 & D-3

2.Dr.S.Krishnaswamy
3.S.Guhan ...R-2 & R-3/R-4 & R-5/D-4 & D-5
4.R.Anuradha Ramaiah
5.Ashok Ramaiah
6.Priya Bala Ramaiah
7.Suchila Rajappan
8.Balameena ...R-4 to R-8/LRs of the deceased
R-2 & R-3

[Accept the cause title petition filed for R-4 to R-8]

PRAYER: Civil Revision Petition under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 13.12.2021 passed by the learned Principal Subordinate Judge, Tenkasi, in I.A.No.60 of 2015 in O.S.No.20 of 2014 and to reject the plaint.

For Petitioner :Mr.Pranav V.Shankar, for
Mr.V.Ramakrishnan

For R-1 :Mr.N.Rajasundara Sekaran, for
Mr.M.Ashok Kumar

For R-2 to R-7 :No appearance



ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order, dated 13.12.2021, in I.A.No.60 of 2015 in O.S.No.20 of 2014 passed by the learned Principal Subordinate Judge, Tenkasi.

2.The parties are referred to as per the rank mentioned before the Court below.

3.The 1st respondent herein/plaintiff has filed a suit in O.S.No.20 of 2014 on the file of the learned Principal Subordinate Judge, Tenkasi, seeking for a declaration that the compromise decree passed in O.S.No.31 of 1985 dated 29.06.1985 as null and void and consequential injunction restraining the proceedings of I.A.No.149 of 2007 and also seeking declaration that the Will No.81 of 2006 is valid and a consequential injunction to give effect to the said Will, as against the plaintiff and the siblings of him. During the pendency of the aforesaid suit, the revision petitioner/1st defendant has filed a interlocutory petition in I.A.No.60 of 2015 in O.S.No.20 of 2014 under Order 7 Rule 11 of Civil Procedure Code to reject the plaint in O.S.No.20 of 2014. The said petition was dismissed on 13.12.2021. Against the said dismissal order, the appellant herein/1st defendant is before this Court.

4.Heard on either side. Perused the material documents available on record.

5.This Civil Revision Petition is filed on the ground that the learned Court below has failed to note that the date of Compromise Decree was passed on 29.06.1985 in O.S.No.31 of 1985 and the date of Will was 14.02.2001 and the Death of mother was on 04.12.2001 and the date of filing of the suit in O.S.No.20 of 2014 was on 05.12.2003. The Court below has failed to note that compromise decree passed as early as 1985 and the mother of the petitioner not questioning the compromise during her lifetime and in such circumstances the suit is clearly barred. The Court below have rejected the plaint both on the ground of non maintainability of suit as per Order 23 Rule 3A and Limitation. The Court below has failed to advert to provisions of Order 7 Rule 11 of Civil Procedure Code while considering the facts of the case.

6.The petition in I.A.No.60 of 2015 was filed by the revision petitioner/1st defendant, under Order 7 Rule 11 of Civil Procedure Code to reject the plaint which was dismissed by the learned Principal Subordinate Judge, Tenkasi. Aggrieved by the said dismissal order, dated 13.12.2021, the revision petitioner is before this Court.

7.The 1st respondent/plaintiff has filed the suit in O.S.No.20



of 2014 for declaring that the compromise decree, dated 29.06.1985 in O.S.No.31 of 1985 is null and void and also sought for consequential reliefs.

8.The compromise decree, dated 29.06.1985 was passed in O.S.No.31 of 1985, which was filed by the 4th defendant in the present suit in which compromise decree was passed.

9.The revision petitioner has filed the petition in I.A.No.60 of 2015 to reject the plaint on the ground that the suit was barred under Order 23 Rule 3A of Civil Procedure Code.

10.The ingredients of **Order 23 Rule 3A of Civil Procedure Code** is extracted hereunder:

"3-A.Bar to suit :-No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. "

11.The Judgment reported in **2022 Live Law S.C. 143, M/s.Sree Surya Developers and Promoters Vs. N.Sailesh Prasad and Ors and M/s.Raja Pushpa Properties Pvt. Ltd., Vs. N.Sailesh Prasad and Ors.**, in which the Hon'ble Supreme Court held as follows;

"11.If we consider the reliefs of declaration of title, recovery of possession, cancellation of revocation of Gift Deed, declaration for DGPA and Deed of Assignment-cum-DGPA, the said reliefs can be granted only if the Compromise Decree dated 13.01.2016 passed in O.S.No.1750 of 2015 is set aside. Therefore, by asking such multiple reliefs, the plaintiff by clever drafting wants to get his suit maintainable, which otherwise would not be maintainable questioning the Compromise Decree. All the aforesaid reliefs were subject matter of earlier suits and thereafter also subject matter of O.S.No.1750 of 2015 in which the Compromise Decree has been passed. Therefore, it is rightly held by the Trial Court that the suit in the present form and for the reliefs sought would be barred under Order XXIII Rule 3A CPC and therefore the Trial Court rightly rejected the plaint in exercise of powers under Order VII Rule 11(d) of the CPC. The High Court has erred in setting aside the said order by entering into the merits of the validity of the Compromise Decree on the ground that the same was hit by Order XXXII Rule 7 of CPC, which was not permissible at this stage of



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deciding the application under Order VII Rule 11 CPC and the only issue which was required to be considered by the High Court was whether the suit challenging the Compromise Decree would be maintainable or not.

12.As observed hereinabove and it is not in dispute that as such the respondent No.1 - original plaintiff has already moved an appropriate application before the concerned Court, which passed the decree setting aside the compromise Decree by submitting an application under Order XXIII Rule 3A CPC therefore the said application will have to be decided and dispose of in accordance with law in which all the defences/contentions which may have been available to the respective parties on the validity of the Compromise Decree would have to be gone into by the concerned court in accordance with law and on its own merits."

12.The plaintiff is also a party in O.S.No.31 of 1985. Admittedly, the plaintiff was also entered into compromise. But, now, he objected the compromise decree on the basis that the property shown in the suit in O.S.No.31 of 1985 are not ancestral property of Balammal and only self acquired property of Balammal. So, there was a fraud played by the plaintiff in O.S.No.31 of 1985.

13.The plaintiff in the present case is also a party in the suit in O.S.No.31 of 1985. After understanding the averments in the plaint only he entered into the compromise. The ruling reported in **AIR 1993 SC 1139**, which was relied by the Court below is not at all applicable in the present suit. In the reported case, the plaintiff has raised a plea of fraud in preparing the compromise.

14.Further, the compromise decree was passed on 29.06.1985. The plaintiff in the present suit is also party to the suit. He has filed the suit after lapse of 29 years to set aside the compromise decree, i.e., 2014.

15.There is no doubt while deciding Under Order 7 Rule 11 petition only the pleadings in the plaint to be looked into. Even, as per pleading the suit is barred under Order 23 Rule 3A of Civil Procedure Code and also barred by limitation.

16.The plaintiff should file the suit for declaration of any decree as null and void within a period of three years.

17.Eventhough, it is not raised by the revision petitioner, it is question of law and need not be raised by the revision petitioner.



18. There is no pleadings raised by the plaintiff that what are the terms are unlawful and against law to set aside the compromise decree.

19. In view of the foregoing discussions, this Court is inclined to interfere with the order passed by the Court below in I.A.No.60 of 2015 in O.S.No.20 of 2014.

20. Accordingly, this Civil Revision Petition is allowed by setting aside the order, dated 13.12.2021 in I.A.No.60 of 2015 in O.S.No.20 of 2014, passed by the learned Principal Subordinate Judge, Tenkasi. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ksa

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Principal Subordinate Judge,
Tenkasi.

+1 CC to M/s.M.ASHOKKUMAR, Advocate (SR-9341[F] dated 01/03/2022)

C.R.P. (MD) No.203 of 2022

28.02.2022

RD(25.03.2022) 5P 3C