



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.02.2022**

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (MD) No.1800 of 2021

and

C.M.P. (MD) Nos.9659 and 9664 of 2021

1.N.Thangaraj

2.R.Rajenthiran

3.T.Nanasegaran

4.K.Deventhiran ... Petitioners/3rd parties/3rd parties

vs.

1.Chinnammal (Family Manager), ...1st respondent/appellant/Plaintiff

2.Pappara Amman Deity @ Nagammal
represented by its
Duraismy Udaiyar (exonerated)

...2nd respondent/1st respondent
1st defendant

Ganesan (died)

3.Pushpam

4.Suresh

5.Bagiyalakshmi ... Respondents 3 to 5/Respondents 3
to 5/3rd parties

PRAYER:- This Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 11.09.2021 made in Lok Adalat Case No.81 of 2021 on the file of the National Lok Adalat held at Thuraiyur (A.S.No.64 of 2016 on the file of the Sub Court at Thuraiyur).

For Petitioners : Mr.R.Singaravelan Senior Counsel for
Mr.D.Selvanayagam

For R1 : Mr.M.P.Senthil for
Mr.N.Sankar Ganesh

**ORDER**

The petitioners have challenged the award passed by the National Lok Adalat held at Thuraiyur in A.S.No.64 of 2016 on the file of the learned Subordinate Judge, Thuraiyur stating that the compromise that is entered into is an illegal and fraudulent one and an abuse of process of Court.

2.The brief facts, which are necessary to dispose of this Civil Revision Petition, are herein below set out.

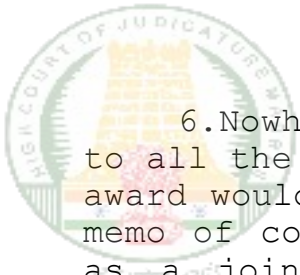
3.The 1st respondent herein had filed a suit O.S.No.410 of 2003 against the 2nd respondent deity represented by Duraisamy Udaiyar and Ganesan (died) seeking bare injunction restraining the defendant from interfering with the plaintiff's enjoyment of the suit 'A' schedule property in her capacity as a Family Manager. The suit was contested and was ultimately dismissed by judgment and decree dated 25.06.2015. Challenging the said dismissal, the 1st respondent/plaintiff had filed A.S.No.157 of 2015 on the file of the learned Subordinate Judge, Tiruchirappalli. Pending the suit, the said Duraisamy Udaiyar, who was representing the deity, was exonerated and thereafter the deity was represented by one, Ganesan. Pending the appeal, Ganesan passed away and his legal representatives were brought on record as respondents 3 to 5. Thereafter, it appears that on 11.09.2021, an award had been passed by the National Lok Adalat, Thuraiyur stating that a joint memorandum of compromise had been filed by the parties. The document, which is shown to be the joint memorandum of compromise, is only an affidavit, which has been filed by the 3rd respondent herein and is not a joint memorandum of compromise signed by all parties. Therefore, the revision petitioners/3rd parties have come forward with this Civil Revision Petition to set aside the award.

4.Heard the counsels on either side.

5.The suit has been filed against the deity represented by its Poojaris in a representative capacity. The procedure contemplated under Order I Rule 8 (4) of the Code of Civil Procedure has not been followed in the instant case, which is evident from a reading of the order impugned. Order I Rule 8 (4) of the Code of Civil Procedure would read as follows:-

"8. (4) :- No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn

under sub-rule (3) of rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule(2)."



6. Nowhere does the award state that the notice had been issued to all the persons, who are interested in the deity. That apart, the award would state that it has been passed on the basis of the joint memo of compromise. However, the document, which has been produced as a joint memo of compromise is an affidavit. This affidavit describes Pushpam as late. Pushpam, which is evident from a reading of the 1st paragraph, which reads as follows:-

“நான் இந்த மனுவில் 1-ம் மனுதாரர், இந்த மேல்முறையீட்டில் 3-ம் எதிர் மனுதாரர், 3-ம் கூடுதல் எதிர்வாதி எனக்கு வழக்கு விபரம் தெரியும். நான் இந்த அபிடவிட்டை கோவில் சார்பிலும் எனக்காகவும் மற்ற மனுதாரர்கள் சார்பாகவும் தாக்கல் செய்வதை 4,5 எதிர் மனுதாரர்கள் அனுசரிக்கிறார்கள்.”

7. The affidavit would state that the parties have agreed that the property belongs to the defendant. It is rather strange that such a compromise has been entered into particularly when the property pending the appeal has been sold to third parties. Be that as it may, the compromise has been entered into against the procedure contemplated under Order I Rule 8(4) of the Code of Civil Procedure.

8. In these circumstances, the Civil Revision Petition stands allowed and the order passed in Lok Adalat Case No.81 of 2021 on the file of the National Lok Adalat held at Thuraiyur (A.S.No.64 of 2016 on the file of the Sub Court at Thuraiyur) dated 11.09.2021 is hereby set aside. The respondents 2 and 4 shall represent the deity and if applications are moved by the interested parties, namely, the worshippers of this deity, the learned Subordinate Judge, Thuraiyur shall consider the applications and implead them, if they prove their credentials, considering the fact that the suit is filed against the defendants in a representative capacity. Further, it is informed by Mr.M.P.Senthil, learned counsel for the 1st respondent that a sum of Rs.5,00,000/- has been paid to the 3rd petitioner and the same has to be refunded. If the payment is proved, it is well open to the claimants to receive the same from the 3rd petitioner. After procedure is followed and the parties are all before the Court, the learned Subordinate Judge, Thuraiyur is directed to dispose of A.S.No.64 of 2016 within a period of 2 months thereafter. It is needless to state that if the parties after entering appearance are ready to compromise the issue, it is well open to them to compromise the matter after following the due procedure. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

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/ /2022

Sub Assistant Registrar(CS)



The Subordinate Judge,
Thuraiyur.

+1 CC to M/s.D.SELVANAYAGAM, Advocate (SR-3632[F] dated 02/02/2022

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NSN (CO)
KB (16.02.2022) 4P 3C