



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Nineteenth day of December Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice S.SOUNTHAR

CMP (MD) No.9123 of 2021
in
S.A No.779 of 1993

1 SUBRAMANIAN (DIED) ,
2.R.MADASAMY NADAR,
3 PALAATHAL,
4 MADASAMY,
5 MURUGANATHAM,
6 MADATHIAMMAL
7 KAMARAJ, ...PETITIONERS 3 TO 7/ PROPOSED APPELLANT 3 TO 7
8 RAMALAKSHMI, ... 8th PETITIONER/PROPOSED 8th APPELLANT

Vs

1 AMARAVATHIAMMAL (DIED) ,
2. P.B.SIVABAKKIAM NADAR,
3 CHETTIYAPPA NADAR,
4 LAKSHMANA PERUMAL RAJA,
5 SHEIK MOHIDEEN MARAIKKAYAR,
6 ABDUL KAREEM MARAIKKAYAR,
7 VASUDEVA NALLUR PANCHAYAT UNION,,
REP. BY ITS BLOCK DEVELOPMENT OFFICER,
VASUDEVANALLUR,
SIVAGIRI TALUK,
TIRUNELVELI DISTRICT.

8 VENNIAMALAYAMMAL,



9 SAMIYA DEVAR,

10 SHANMUGHATHAI,

11 R.SUBRAMANIAM,

12 SENDURPANDI,

13 R.KARUTHAPANDI,

14 GANAPATHIYAMMAL,

15 MADATHIYAMMAL,

16 KALIYAMMAL,

17 SAMUDRAGANI,

18 SUBBIAH,

19 MADASAMY,

20 PECHIIYAMMAL,

21 ANNAMALAI,

22 GURU @ GURUSWAMY,

23 R.THANGASAMY (DIED) ,

24 T.RAMASAMY @ RAJA,

25 INDIRA,

26 RAJAMMAL @ ANITHA,RESPONDENTS 1 TO 26/ RESPONDENTS 1 TO 26

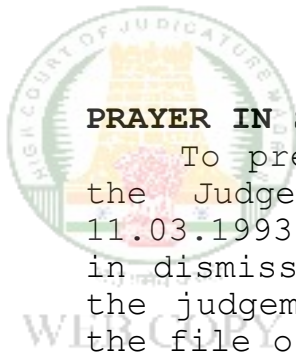
27 R.T.ARASU,

28 T.TAMILARASAN,

29 T. GANDHI,

30 T.KALAIYARASU, ...PROPOSED RESPONDENTS 27 TO 30
/ PROPSOED LR'S OF THE DECEASED 23rd RESPONDENT

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to pass a compromise decree in the second appeal in S.A.No. 799 of 1993 on the file of this Honourable Court as per the Memorandum of Compromise.

**PRAYER IN SA.779 of 1993:**

To prefer this memorandum of Grounds of Second Appeal against the Judgement and decree passed in A.S.No.24 of 1989 dated 11.03.1993 on the file of the Additional District Judge, Tirunelveli in dismissing the first appeal preferred by the appellants against the judgement and decree dated 16.03.1989 in O.S.No.83 of 1979 on the file of the Court of the Subordinate Judge at Tenkasi.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.T.S.R.VENKATARAMANA, Advocate for MR.S.SIVA THILAKAR, Advocate for the petitioners and of MR.ARM. RAMESH, Advocate on behalf of the Respondents, the court made the following order:-

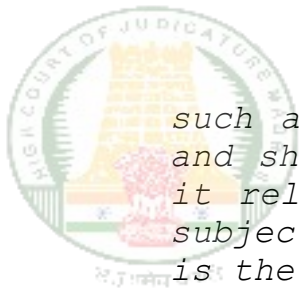
Orders reserved on 14.12.2022	Orders pronounced on 19.12.2022
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This petition is filed with a prayer to pass a compromise decree based on the memorandum of compromise dated 05.01.2005 entered between the 1st and 2nd petitioners viz., Subramanian and Madasamy Nadar, the 23rd respondent, R.Thangasamy and the 24th respondent T.Ramasamy @ Raja.

2. Though the compromise memo was said to have been executed on 05.01.2005, the present petition for recording the said compromise was filed before this Court only on 24th March, 2015. The present second appeal is the one arising out of a suit for partition and separate possession. Two of the signatories to the said compromise memo viz., the 1st appellant Subramanian and the 23rd respondent Thangasamy had passed away before presentation of this petition and their legal representatives were brought on record. The present petition for recording the compromise memo was seriously objected by the 24th respondent herein viz., Ramasamy @ Raja, the son of deceased 23rd respondent Thangasamy. The 24th respondent herein opposed this petition mainly on the ground that the signature of his father Thangasamy found in the compromise memo is a forged one.

3. When a compromise of a dispute in a *lis* is alleged by one of the parties and the same is denied by the other parties, the Court shall decide the question whether the parties really entered into a compromise or not. It would be appropriate to refer to the relevant provision of law in this regard viz., proviso to Order XXIII Rule 3 of CPC, which reads as under:

"3. Compromise of suit.—Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [in writing and signed by the parties] or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order



such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:]

[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]”

4. A cursory look at proviso to Order XXIII Rule 3 CPC would suggest when compromise of a dispute in a *lis* is alleged by one party and denied by the other, the Court can go into the question whether the compromise was, in fact, entered into between the parties or not. This was held so in a case law in **P.S.S.Somasundaram Chettiar Vs R.Sathappan and others** reported in [(1983) 96 MadLW 608]. The relevant observation of the Division Bench of this Court is as follows:

“28. Thus, after consideration of the provision of law and the views expressed in the above judicial decisions, we are of the view that for the purpose of answering the first question contained in the unamended O. 23, R. 3, C.P.C.—: “Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part” – it is the foremost duty of the court before which an application has been filed for recording a compromise to investigate the question whether it has been satisfied that the suit has been adjusted wholly or in part by the the agreement, which is attacked as the result of fraud, undue influence and coercion. Especially so, in this case, where the applicant, who stands in a fiduciary relationship as father has propounded the agreement, which is said to have been signed by the quondam minor, viz., the respondent, the respondent's wife and the applicant's own wife, viz. the second plaintiff, with respect to several other items of properties, which are not the subject-matter of the suit and the encumbrances over the few items of properties allotted to the quondam minor are said to be very heavy, which fact has not been disclosed in the agreement and the agreement having been propounded more than one year and two months after the date of the agreement.

29. Accordingly, we answer the reference that the first limb of R. 3, O. 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



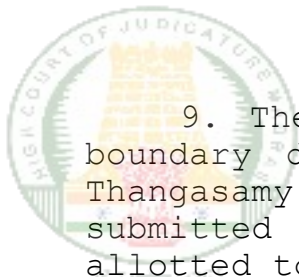
influence and coercion. Any observation made by us in the course of our judgment will not prejudice the parties in the disposal of the application on merits by the court which will dispose of the same. With the above observations, we direct that the applications be enquired into and disposed of on merits. There will be no order as to costs."

5. The petitioners herein also filed M.P.(MD) No.4 of 2015 in S.A.No.779 of 1993 for receipt of the additional documents viz., certified copy of the Will executed by Amaravathiammal dated 01.01.1999, partition agreement dated 21.11.2004, certified copy of the sale deed executed by the 23rd and 24th respondents in favour of T.Muruganandam dated 23.11.2005 and certified copy of the sale deed executed by the 23rd and 24th respondents in favour of Shanmugaraj dated 13.07.2006. The said petition in M.P.(MD) No.1 of 2015 was already allowed by this Court on consent and the documents above mentioned were marked as Ex.A.17 to Ex.A.20 in this appeal.

6. The learned counsel for the petitioners, by mainly relying on Ex.A.19 and Ex.A.20 sale deeds executed by the 23rd and 24th respondents, submitted that the deceased Thangasamy Nadar and the 24th respondent in subsequent sale deeds executed by them referred to the compromise memo and admitted the same. It is the contention of the learned counsel for the petitioners that having admitted the compromise dated 05.01.2005 in the registered sale deed executed by him, it is not open to the 24th respondent to turn around and deny the compromise now sought to be recorded.

7. Opposing recording of the compromise, the learned counsel for the respondents submitted that the signature of Thangasamy found in Ex.A.20, which is admitted by the petitioners differs with the signature of Thangasamy found in the compromise memo sought to be record now even for the naked eye. Therefore, a mere comparison of signature of Thangasamy in the compromise memo with the admitted document in Ex.A.20 would make it clear that the contention of the 24th respondent is acceptable. The learned counsel further submitted that in Ex.A.19 and Ex.A.20 documents, which were produced by the petitioners before this Court in M.P.(MD) No.4 of 2015, there is no reference about the compromise now sought to be recorded. Therefore, it is the contention of the learned counsel for the respondents that the 24th respondent never admitted the compromise dated 05.01.2005 now sought to be recorded by the petitioners.

8. A perusal of Ex.A.20 would make it clear that the compromise memo dated 05.01.2005, now sought to be recorded by the petitioner, is not at all referred to in Ex.A.20. Ex.A.20 only refers a compromise dated 21.11.2004, not the compromise dated 05.01.2005 and hence Ex.A.20 would not advance the case of the petitioners to show that the compromise memo sought to be recorded by the petitioners was not admitted by the 24th respondent.



9. The learned counsel for the petitioners by relying on the boundary description mentioned in Ex.A.19 sale deed executed by Thangasamy and the 24th respondent in favour of one Muruganandam submitted that in Ex.A.19, joint family properties, which were allotted to the 2nd petitioner viz., Madasamy Nadar in the compromise memo sought to be recorded, were mentioned as the properties of Madasamy Nadar. It is the contention of the learned counsel for the petitioners that by accepting the property on the western side of subject matter of the property that has been dealt with in Ex.A.19 as Madasamy Nadar's property, Thangasamy Nadar and the 24th respondent admitted the compromise memo sought to be marked now.

10. In Ex.A.19 also, there is no reference about the compromise memo dated 05.01.2005 sought to be recorded in this petition. From the boundary description found in Ex.A.19, we cannot assume that compromise was acted upon, when there is no specific reference about the disputed compromise memo in Ex.A.19.

11. The learned counsel for the petitioners also referred to the deposition of one Arasu, who was examined as D.W.1 in O.S.No.38 of 2008 on the file of Sub Court, Sankarankovil. The learned counsel for the petitioners submitted that the compromise memo dated 05.01.2005 sought to be recorded now was admitted by the said Arasu, the stepbrother of the 24th respondent as D.W.1 in the said case. The admission made by the stepbrother of the 24th respondent will not bind him and hence the said contention of the learned counsel for the petitioners cannot be accepted.

12. The learned counsel for the petitioners by relying on the judgment of the Apex Court in **Ripudaman Singh Vs Tikka Maheshwar Chand** reported in **[(2021) 7 SCC 446]**, submitted that the Court shall endeavour to encourage the settlement of dispute by the parties. This Court has no quarrel with the said contention of the learned counsel for the parties. If there is a valid settlement arrived at between the parties, this Court can very well record the same, but when the settlement between the parties is alleged by one of the parties to the litigation and denied by the other parties to the litigation, this Court necessarily should be satisfied with the fact that really the parties entered into a compromise and then one of the parties is trying to wriggle out of the compromise arrangement. Unless the Court is satisfied with the fact of actual compromise, the same cannot be recorded, when it is denied before the Court by one of the parties.

13. In the case on hand, though the compromise was sought to be entered into between the parties on 05.01.2005, the same is sought to be recorded by filing a petition only on 24th March, 2015. Though the petition for recording the compromise was filed on 24.03.2015, it was numbered only in 2021. Absolutely, there is no acceptable explanation on the part of the petitioners to explain the delay of



yearly 10 years in filing an application to record the compromise reached in the year 2005. Though the learned counsel for the petitioners by referring to the sale deeds dated 23.11.2005 and 13.07.2006, marked as Ex.A.19 and Ex.A.20 submitted that the compromise entered on 05.01.2005 was acted upon, in view of the discussions made above, this Court is unable to accept the contention of the learned counsel for the petitioners. Further, the 24th respondent filed a counter wherein he specifically mentioned that mere comparison of the signature of his father Thangasamy found in the compromise memo dated 05.01.2005 with the admitted document produced by the petitioners in Ex.A.20 would make it clear that there are vast differences in the style of signature. This Court endeavoured to compare the signature of Thangasamy found in the compromise memo dated 05.01.2005 and the admitted document produced by the petitioners in M.P.(MD) No.4 of 2015 in S.A.No.779 of 1993 viz., Ex.A.20. There is a vast difference between the two signatures of Thangasamy found in Ex.A.20 and the compromise memo. The style of initial 'R', the first letter 'T', the letter 'g' found in middle and the last letter 'i' are completely dissimilar. Further, the general style and stroke of signature found in Ex.A.20 and the compromise memo are also different. The difference between the disputed signature and the admitted signature are so glaring to the naked eye. In these circumstances, this Court is unable to arrive at a conclusion that the parties really compromised the matter and entered into a compromise on 05.01.2005 especially when compromise is sought to be recorded after 10 years from the date on which it is said to have been entered into.

14. In view of the discussions made earlier, this Civil Miscellaneous Petition is dismissed.

15. Registry is directed to post the second appeal for final hearing on 11.01.2023.

sd/-
19/12/2022

/ TRUE COPY /

/12/2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

ABR

TO

1 THE ADDITIONAL DISTRICT JUDGE, TIRUNELVELI

2 THE SUBORDINATE JUDGE, TENKASI

+1. CC to M/s.ARM. RAMESH, Advocate (SR-15106[I] dated 19/12/2022)

ORDER
IN
CMP(MD) No.9123 of 2021
in
SA(MD) No.779 of 1993
Date :19/12/2022