



Appeal Suit.No.1055 of 2003

WEB COPY IN THE HIGH Court OF JUDICATURE AT MADRAS

Reserved on	18.12.2023
Pronounced on	21.12.2023

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

Appeal Suit.No.1055 of 2003

Veerammal

.....Appellant/Defendant

Vs.

1.Ajagammalle

2.Appourttrane

3.Subangi

4.Malady

5.Revathy

6.Sarathy

7.Kidha (died)

8.Mohanapriyan

9.Minor Nadhini

10.Minor Guna

Respondents 9 and 10 represented by guardian

Amavasai paternal under of Respondents.



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(Respondents 8 to 10 are brought as record as
legal of the deceased 7th respondent made in
C.M.P.No.516 & 517 of 2012 in
A.S.No.1055 of 2003 vide Court order dated
14.11.2018 (PTAJ)

....Respondents/Plaintiffs

Prayer: Appeal Suit has been filed under section 19(1) of the Family Court Act, against the judgment and Decree dated 11.02.1999 made in O.S.No.22 of 1996 on the file of the Family Court, Pondicherry.

For Appellants : Mr.A.S.Manisha
For T.R.Rajaraman
For R1 to R6 : Mr.K.V.Sundararajan
For R7 :
For R8 to R10 : No appearance

J U D G M E N T

This appeal is directed against order dated 11.01.1999 made in O.S.No.22 of 1996 on the file of the Family Court, Pondicherry.

For the sake of convenience the parties are referred to as per their



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rankings in the suit.

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2. The case of the plaintiffs is that the plaintiffs filed the suit for setting aside the judgment and decreetal order dated 26.6.95 in O.S.No.26/94 on the file of the Family Court at Pondicherry.

3. The plaintiffs averred that the defendants have filed the suit against one deceased Ranganathan, the husband of the first plaintiff and the father of the other plaintiffs 2 to 6 herein in O.S.No.26/94 on the file of this Court claiming for maintenance at the rate of Rs.1000/- per month and also creating charge over the B Schedule Property and in the said suit, the deceased Shanemougame @ Ranganathan had filed his written statement, in which, he clearly stated that the first defendant is not his wife and the second defendant is not born to him through the first defendant and he also completely denied any kind of marriage or wedlock with the first defendant and also stated that he is not under any legal or moral duty to maintain the defendants therein.

4. The plaintiffs submitted that the deceased Shanmougame @



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Ranganathan had already married the first plaintiff herein according to Hindu rites and customs at Mannadipet and the marriage was registered in Etat Civil Office, Mannadipet Commune Panchayat, Pondicherry and out of the said wedlock the plaintiffs 2 to 6 were born, and their birth were also duly registered in the office of the Mannadipet Commune Panchayat, Pondicherry and therefore the allegations made by the defendants herein in O.S.No.26/94 that the first defendant was legally wedded wife of the deceased Ranganathan by virtue of the marriage solemnized on 19.6.1968 at Mannadipet and three children were born in wedlock are utter falsehood and there is no iota of evidence to such allegations.

5. The plaintiffs further submitted that the second defendant became major and she was already given in marriage to one Kuppusamy of Sompet colony and a male child by name Mohanapriyan was born to them. The said fact was also suppressed by the defendants in O.S.No.26/94 and hence, both the defendants are not entitled to any relief including the relief of maintenance.

6. The plaintiffs further averred that subsequent to the filing of the written statement in O.S.No.26/94 they came to know that the defendant



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have no case at all and they had taken advantage of the old age and drinking habit of the deceased Shanmougame @ Ranganathan, made him to consume alcohol and obtained his signature in the compromise memo and filed it before the concerned Court and got a decree in their favour. The above decree was obtained by fraud, coercion and undue influence. The plaintiffs were not aware of the proceedings in O.S.No.26/94 till the receipt of the Court notice in E.A.No.6/96 i.e. E.P.No.17/95, filed for impleading them as proposed parties after the death of Shanmougame @Ranganathan. Even though they were not aware of the grounds on which the defendants have filed the earlier suit in O.S.No.26/94 and also the contents of the judgment and decree passed on 26.06.1995. Subsequently, they came to know from reliable source that the defendants have obtained judgment and decree against the deceased Shanmougame @ Ranganathan by fraud, coercion and undue influence and only thereafter they obtained the certified copies of the judgment and decree dated 26.6.95 in O.S.No.26/94 on 26.4.96 and also certified copies of plaint and written statement and approached their counsel on 27.4.96 and came to know the entire matter and the contents of the judgment and decree and was fully convinced with knowledge and ascertained the facts that the



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defendants herein obtained the judgment and decree in O.S.No.26/94 by fraud, coercion and undue influence. Hence, the plaintiffs filed the present suit for setting aside the judgment and decree in O.S.No.26/94 dated 26.6.95 on the file of Family Court, Puducherry.

7. The first defendant filed the written statement and the same was adopted by the second defendant. The defendants denied all the allegations and stated that the suit filed for setting aside the judgment and decree dated 26.6.95 in O.S.No.26/94 on the file of Family Court was without any substance and merit and that, there is no prima facie evidence to prove the alleged allegations and therefore, the suit is liable to be dismissed in limine and that the plaintiffs' allegations that the decree in O.S.No.26/94 was obtained by fraud, coercion and undue influence absolutely lack substantially without any facts mentioned in the plaint and therefore, the suit is devoid of merits. The defendants contended that the deceased Ranganathan in O.S.No.26/94 appeared before the Court and agreed for the compromise and in fact it was he who proposed for a settlement to be made in the suit and he himself signed the compromise memo and the Court was also pleased to ask him whether he is in full



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sanity agreeable for the said compromise memo and therefore there is no fraud, coercion and undue influence and it was the deceased Ranganathan who voluntarily proposed to make settlement on his own volition and free will and therefore, the plaint averments are false and baseless and vexatious.

8. The defendants denied that the plaintiffs came to know about the suit in O.S.No.26/94 only after the service of summons in E.A.No.6/95 in 03.02.1795 and the same is utter falsehood and it was the second plaintiff who used to accompany the deceased Ranganathan every hearing to the Court in the suit in O.S.No.26/94 and therefore, the whole suit is illconceived and illfounded and designed for the purpose of harassing the defendants by protracting the proceedings in E.P.No.17/9 and E.P.No.18/95 thereby delaying the process of enjoyment of the fruits of the judgment in O.S.No.26/91. The defendants contended that it is a settled proposition of law that the compromise judgment and decree cannot be assailed in a separate suit as it is barred by the provisions of CPC and it is only when the compromise decree is the result of fraud and misrepresentation perpetrated on the Court, the same may be impugned in



a separate suit and therefore, the defendants prayed for the dismissal of the suit.

9. On the basis of pleadings, the trial Court has framed the following issues:

1. Whether the defendants have obtained the decree in O.S.No.26/94 on 26.06.1995 before this Court by fraud, coercion and undue influence ?

2. Whether the plaintiff came to know about this decree only at the time of receiving notice in E.A.No.6/96 in E.P.No.1/95 ?

3. Whether the suit is not maintainable as the decree in O.S.No.26/94 was a compromise decree?

4. Whether the plaintiff is entitled for the decree as prayed for?

5. To what relief is the plaintiff entitled to ?

10. On consideration of the pleadings and materials on record and the arguments advanced on both sides, the Court below passed the judgment, the relevant portion which is extracted here under:

“In view of the above findings this Court must hold that the decree passed in O.S.No.26/94 dated 26.06.1995 was obtained by fraud, coercion and



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undue influence and therefore, the same has to be cancelled.”

11. Aggrieved by this, the defendant in O.S.No.22 of 1996 preferred the present appeal.

12. The learned counsel appearing for the appellant would submit that the learned Trial Court erred in holding that the earlier judgment and decree passed in O.S.No.26 of 1994 was obtained by fraud and undue influence, inspite of the fact that the plaintiffs in the above suit had the knowledge of the earlier proceedings as the deceased Shanmougame @ Ranganathan was brought to Court only by the plaintiffs/respondents herein. He would further contend that the plaintiffs/respondents herein failed to establish that the deceased Ranganathan has signed the memo of compromise under the influence of alcohol and if that is true, the Courts below, would not have recorded the compromise. His further contention is that the Courts below without examining the person would not have accepted the compromise memo and therefore, the learned Trial Court Judge was wrong in accepting the contention of the plaintiffs. Moreover,



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the denial in the written statement made by the 1st defendant in O.S.No.26

of 94 alone cannot be the reason to state that the compromise memo was

entered by fraud. The learned counsel placing reliance on the judgment in

S.A.No.501 of 2013, would contend that the remedy available to a consent

decree is to approach the Court which recorded the compromise and to

establish that there was no compromise between the parties. The learned

counsel also placed reliance on the decision case reported in **1951 SCC**

447 and would submit that unless it is established by the plaintiffs that the

1st defendant was under the influence of alcohol at that time and was

forced to sign the memorandum of compromise, it is impossible to reach a

proper conclusion that fraud was committed. The learned counsel further

relied upon the decision cases reported in **(2020) 6 SCC 629** in which, it is

held that a separate suit challenging the compromise decree is not

maintainable. Therefore, he would submit that without any materials on

record, it cannot be construed that the said compromise decree was

obtained under fraud and that the separate suit challenging the

compromise decree is not maintainable and only remedy available is to

approach the Court which recorded the compromise and to establish that

there was no compromise. Moreover, an independent person who is not a



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party to the compromise decree, cannot maintain a separate suit challenging the compromise decree. Therefore, the judgment and decree passed by the learned Trial Court is liable to be set aside.

13. On the other hand, the learned counsel for the respondents would contend that the defendants filed the suit in O.S.No.26 of 1994 on the file of the Family Court, Puducherry claiming maintenance at the rate of Rs.1000/- per month and also to create charge over the B Schedule property and in the said suit the deceased Ranganathan filed his written statement, in which, he clearly stated that the first defendant is not his wife and the second defendant is not born to him through the 1st defendant and he also denied the factum of marriage between the first defendant and himself and also stated that he is not under any legal or moral obligation to maintain the defendants. It is further contended that the deceased Shanmougane @ Ranganathan already married the first plaintiff herein according to Hindu Rites and Customs and the same was also registered. In the said wedlock plaintiffs 2 to 6 were born to them. Therefore, the allegations made by the defendants in O.S.No.26 of 1994 that the 1st defendant was legally wedded wife of deceased Ranganathan by virtue of



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the marriage solemnized on 19.6.68 at Mannadipet and in the said wedlock three children were born, are utter falsehood. He further submits

that since the 2nd defendant became major and got married to one Kuppusamy and a male child was born to her on 01.08.1992, the 2nd defendant is not entitled for any relief, including the relief of maintenance claimed in O.S.No.26 of 1994. Further contention of the respondents/plaintiffs is that taking advantage of the old age and drinking habit of the deceased Shanmougame @ Ranganathan, the defendants made him to consume alcohol and obtained his signature in the compromise memo filed before the Family Court, Puducherry and got a decree in their favour. The said decree was obtained by fraud, coercion and undue influence and the plaintiffs were not aware of the proceedings in O.S.No.26 of 94 till the receipt of Court notice in E.A.No.6 of 1996 in E.P.No.7 of 1995 on the file of the Trial Court, Puducherry for impleading them as proposed parties after the death of Shanmougame @ Ranganathan. Hence, the plaintiffs filed the above suit in O.S.No.22 of 1996 for setting aside the judgment and decree in O.S.No.26 of 1994 dated 26.06.1995 on the file of the Trial Court, Puducherry. The learned counsel appearing for the respondents/plaintiffs would submit that the trial Court, after considering



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the above facts rightly decreed the suit in favour of the respondent /plaintiff by setting aside the decree and judgment passed in O.S.No.26 of 94 dated 26.06.1995 which warrants no interference. The learned counsel would further submit that if the suit is decreed on the basis of the compromise and that compromise takes in property valued more than Rs.1000/- and such property is not subject matter of the suit in which compromise decree was passed, such compromise decree is to be compulsorily registered. To support his contention he has relied upon the following decision reported in **2006 5 CTC 79** in which it is held that

“On plain reading of Section 17 of Registration Act, with particular reference to Clause (vi) of sub-section (2) it is clear that a decree or order of a Court and a compromise decree that relates only to the subject matter of the suit need not be registered or registered on the ground that it is a non-testamentary, instrument which purports to or operates to create, declare, assign, limit or extinguish any right to or in immovable property or which acknowledges receipt or payment of any consideration on account of a transaction which brings about the above results. But if a suit is decreed on the basis of a compromise and that compromise takes in property that is not the subject matter of the suit, such a compromise decree would require registration. Of course,



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we are not unmindful of the line of authorities that say that even if there is inclusion of property that is not the subject matter of the suit, if it constitutes the consideration for the compromise, such a compromise decree would be considered to be a compromise relating to the subject matter of the suit and such a decree would also not require registration in view of Clause (vi) of Section 17(2) of the Registration Act. Since we are not concerned with that aspect here, it is not necessary to further deal with that question. Suffice it to say that on a plain reading of Clause (vi) of Section 17(2) all decrees and orders of Court including a compromise decree subject to the exception as regards properties that are outside the subject matter of the suit, do not require registration on the ground that they are hit by Section 17(1)(b) and (c) of the Act. But at the same time, there is no exemption or exclusion, in respect of the Clauses (a), (d) and (e) of Section 17(1) so that if a decree brings about a gift of immovable property, or lease of immovable property from year to year or for a term exceeding one year or reserving an early rent or a transfer of a decree or order of a Court or any award creating, declaring, assigning, limiting or extinguishing rights to and in immovable property, that requires to be registered.”

14. Based on the above submission, the points that arise for



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consideration are as follows:

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1. Whether the trial Court has rightly set aside the judgment and decree passed in O.S.No.26 of 1994 on the file of the Trial Court, Puducherry?

2. Whether this appeal can be allowed or not?

Point Nos.1 & 2:

According to the appellant, who is the defendant in O.S.No.26 of 94, filed the suit for setting aside the judgment and decree dated 26.06.95 in O.S.No 26 of 1994 on the file of the Family Court, Puducherry without substance or merit. According to the appellant/defendant the deceased Ranganathan appeared in O.S.No. 26/94 before the Family Court Puducherry and entered into a compromise and the compromise memo was signed by him in the Court hall. The Court was also pleased to ask him whether he fully agreed for the said compromise and there is no fraud, coercion and undue influence, as alleged by the respondent/plaintiff. The deceased Ranganathan voluntarily proposed to make settlement on his own volition and free will and therefore, allegations made by the



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respondent/plaintiff in the suit in O.S.No.22 of 1996 is utter false and baseless. Further contention of the appellant is that the respondents came to know about the suit in O.S.No.26 of 1994 only after the service of summons in E.A.No.6 of 1995 in E.P.No.7 of 1995 is also false. According to the appellants/defendants it was second plaintiff who used to accompany the deceased Ranganathan for every hearing during trial of the suit, in O.S.No.26/94 and therefore, the whole suit is mis-conceived , ill-founded and designed for the purpose of harassing the defendants by protracting the proceedings in E.A.No 6 of 1996 and E.P.No.17 of 1995. The appellants are unable to enjoy the fruits of the decree till date.

15. On the other hand, the respondents would submit that the judgment and decree in O.S.No 26 of 94 was obtained by fraud, coercion and undue influence.

16. It is settled proposition of law that judgment and decree of compromise cannot be assailed by means of a separate suit, which is barred under the provisions of Civil Procedure Code. If it is established that the compromise decree is the result of fraud and misrepresentation



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made before the Court, then the same can be challenged by the way of filing a separate suit. In this case, the respondent/plaintiff would contend that in the written statement, there was categorical denial by the said Ranganathan that the 1st defendant is not his wife and the 2nd defendant was not born to him through the 1st defendant and also stated that he is not under any legal or moral duty to maintain the defendants. Hence the deceased Ranganathan would not have entered into any compromise decree between the defendants. Taking advantage of his old age and drinking habit the defendant made the deceased Ranganathan to consume alcohol and obtained signature in the compromise memo which was filed before the Trial Court and got the decree in their favour by fraud, coercion and undue influence and the plaintiffs were not aware of the proceedings in O.S.No26/94 till the receipt of Court notice in E.A.No 6/ 96 and E.P.No.17 of 95 on the file of the Trail Court,Puducherry for impleading themselves as proposed parties after the death of Ranganathan. If the above contention of the respondent/plaintiff is true, this Court is surprised as to how the respondent /plaintiff came to know that taking advantage of the old age of the deceased Ranganathan and his drinking habits, the defendant made him to consume alcohol and obtained the signature in the



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compromise memo before the Family Court, Puducherry and got the decree in their favour.

17. It is not established by concrete evidence that the deceased Ranganathan signed the memo of compromise under the influence of alcohol. If really the said Ranganathan was under the influence of alcohol while the compromise memo was recorded, the learned Family Court Judge would not have recorded the compromise. Moreover, if it is true that the compromise was arrived at by coercion without examining the person, the trial court would not have accepted the compromise. Unless there are necessary materials in this regard, it is impossible to reach at a proper conclusion that the deceased Ranganathan signed the memo of compromise under the influence of alcohol. Except from the evidence of P.W.2, who is an interested witness, there is no other material on record to show that the said compromise memo was signed by the deceased Ranganathan under the influence of alcohol. Apart from that, the deceased Ranganathan has not preferred any application before the Family Court, Puducherry for setting aside the compromise decree during his life time, though he died three months later, after the compromise memo was



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recorded. If the same is obtained by fraud, coercion and undue influence,

he would have filed an application before the concerned Court which passed the compromise decree for setting aside the same. The remedy was very much available to him who is a party to the consent decree to avoid such consent decree by approaching the Court which recorded the compromise and to establish that there was no compromise. In that event, the Court which recorded the compromise would have considered and decided the question as to whether there was a valid compromise or not. However, the deceased Ranganathan never challenged the compromise decree passed by the Court below. As per the decision made in **2020 6 SCC 629** a stranger cannot file an independent suit challenging the lawfulness of compromise decree. The compromise decree operates as estoppel until it is established that the same has been obtained by fraud, coercion and undue influence, which is not done in the present case. Therefore, the suit filed by the plaintiff in O.S.No.22 of 96 challenging the illegality of the compromise decree is not maintainable. The plaintiffs who were not party to the compromise, would not have the cause of action to file a separate suit to challenge the legality of the compromise. Therefore, the judgment and decree passed by the trial Court in O.S.No.22 of 1996 is



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liable to be set aside. Accordingly, set aside.

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18.In the result, the appeal suit is allowed. No costs. Since the execution proceedings are pending from the year 1995 the Court below is directed to dispose of the execution proceedings within a period of two months from the date of receipt of the copy of this order.

21.12.2023

vsn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order



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K.GOVINDARAJAN THILAKAVADI, J.

vsn

Pre-delivery judgment made in

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