



WEB COPY



CRP. No. 948 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 01.08.2022

Delivered On : 29.09.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Civil Revision Petition No.948 of 2020

and

C.M.P.No.5107 of 2020

Mrs.Marie Therese
Anandhi Vanina
@ Vanina Rajarathnam
(Accepted the cause title vide
Court Order dated 25.02.2020
made in CMP.No.4094/2020
in CRP.SR.No.18918/2020)

.. Petitioner

Versus

1. Mr. Pratap Pierre Gerard De Condappa
2. P.F.G. Rajarathnam
3. Stanislas Francois Vincent Noel Jacques
4. Mark Teilhard Charlese Fernand
5. Gerard Jean Paul Anadou Armand

... Respondents

Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Lok Adalat award dated 24.04.2015 passed in Lok Adalat Case No.3483 of 2015 before the Lok Adalat at Puducherry in connection with O.S.No.2368 of 2013 on the file of the learned I Additional District Munsif, Puducherry with exemplary cost.

For Petitioner : Mr. Srinath Sridevan, Senior Advocate
for Mr.R.Udhayakumar

For Respondents : Mr. G. Mohammed Aseef



CRP. No. 948 of 2020

ORDER

WEB COPY

This Civil Revision Petition has been filed to set aside the Lok Adalat Award dated 24.04.2015 passed in Lok Adalat Case No.3483 of 2015 before the Lok Adalat at Puducherry in O.S. No. 2368 of 2013 on the file of the learned I Additional District Munsif, Puducherry.

2. The Revision Petitioner is the fifth Defendant in the suit in O.S. No. 2368 of 2013.

3. The said suit was filed by the first Respondent/Plaintiff for the following relief:-

"Pass a Decree of Mandatory Injunction directing the Defendants to rectify the mutual mistake mentioned in the suit C Schedule i.e., insert to an extent of 16,484 sq.ft., instead of 6100 sq.ft, in the B Schedule property of the registered partition deed dated 11.03.1976 vide document No. 405 of 1976 registered on the file of Pondicherry Sub Registrar and thereby to execute Rectification Deed in favour of the Plaintiff and that in the event of their failure thereon direct the execution and registration of such Rectification Deed through Court to and in favour of Plaintiff and for costs and other reliefs."

4. During the pendency of the suit, the parties have arrived at a compromise of the dispute among themselves. Therefore, to explore the possibility of a settlement among themselves, the matter was posted before the

Lok Adalat at Pondicherry. Admittedly, before the Lok Adalat, a Joint



CRP. No. 948 of 2020

Compromise Memo was filed by the Plaintiff and Defendants. It is pertinent to mention that the Joint Compromise deed was signed by the Plaintiff/first Respondent herein, first Defendant P.F.G. Rajarathinam (on his own behalf and on behalf of the Defendants 2, 3 and 5) and Mr. Gerard Jean Paul Anandou Armand, the fourth Defendant in the suit. It is also an admitted fact that on the basis of such a joint compromise decree, the suit was decreed and court fee paid by the Plaintiff was also ordered to be refunded.

5. At this stage, the fifth Defendant in the suit has come forward with this Civil Revision Petition.

6. The learned Senior Counsel for the Revision Petitioner/fifth Defendant mainly contended that the Trial Court, before recording the compromise decree, ought to have issued summons to all the Defendants and satisfied itself that all the Defendants have whole heartedly accepted the compromise arrived at. According to the learned Senior Counsel, no summons was issued to the fifth Defendant. However, on behalf of the fifth Defendant, the first Defendant had signed the compromise memo without her knowledge and consent. The learned Senior Counsel further submitted that on 31.03.2014, the first Defendant appeared before the Trial Court, made an



CRP. No. 948 of 2020

endorsement to the effect that he has no objection for a decree being passed.

Such an endorsement has been made by the first Defendant for himself and the other Defendants 2, 3 and 5 in his capacity as power of attorney agent. However, the Trial Court has not even taken pains to verify as to whether the first Defendant adequately represents the interest of the other Defendants, including the Petitioner herein. In fact, the power of attorney deed dated 27.10.2010 registered as document No. 1191 of 2010 given to the first Defendant was subsequently revoked by a Revocation of Power of Attorney Deed dated 25.08.2015 registered as document No. 3159 of 2015. It is also stated that already, the Petitioner herein has filed O.S. No. 31 of 2016 and O.S. No. 202 of 2019 for partition as against the Respondents 1 to 5 herein and others and they are pending on the file of Additional District Court at Puducherry. While so, in order to defeat the right and interest of the Petitioner, the compromise has been worked out behind her back and consequently, the decree passed in the suit is a nullity and it will not bind the Petitioner in any manner.

7. The learned Senior Counsel for the Petitioner would vehemently contend that the decree obtained in the suit would amount to fraud. In other words, based on misrepresentation and collusion, the decree has been obtained



much to the chagrin of the Petitioner herein. Therefore, such a decree can be set at naught by this Court.

8. In order to buttress this submission, the learned Senior Counsel placed reliance on several decisions of the Honourable Supreme Court namely (i) **2008 (2) SCC 660** in **State of Haryana Vs. Shardul Singh** in which it was held that the jurisdiction conferred upon the Lok Adalat has been misused and abused by the parties to the case and therefore, the award passed thereon is liable to be set aside.

8. The learned Senior Counsel for the Petitioner also relied on the following rulings:

8.1. **MANU/TN/6791/2019** in the case of **M.Sudhakaran Vs. K.Perumal Chettiar and Ors** wherein this Court had held as follows:

“6. It is settled position that the Defendants should be given due opportunity of hearing and they should be served with prior notice. In the case on hand, the Plaintiff sent notice only to the Power Agent, N,Natchimuthu and not to the Defendants. In other words, the Defendants were not served with any notice in O.S.No.304 of 2006. It is settled position that in the absence of service of summons on the Defendants, any Order passed against the Defendants is liable to be set aside, on this ground alone. The Defendants in their affidavit specifically stated that the Power Agent is planted by the Plaintiff to grab the property of the Defendants. The Defendants came to know about the ex-parte decree only on 22.10.2010. In order to establish the Defendants case, they have produced 19 documents, which were marked



as Exs.P1 to P19. From the perusal of the cause title in O.S.No.304 of 2006, it can be seen that the Defendants were presented by the Power Agent, N.Natchimuthu. However, the Plaintiff did not file the Original Power Deed or sought any permission under Order 3 Rule 1 and 2 of the Civil Procedure Code.”

8.2. **2021 SCC Online SC 898** in the case of **Estate Officer Vs. Colonel H.V. Mankotia (Retired)** wherein the Hon'ble Supreme Court has observed as follows:

“11. Thus, a fair reading of the aforesaid provisions of the Legal Services Authorities Act, 1987 makes it clear that the jurisdiction of the Lok Adalat would be to determine and to arrive at a compromise or a **settlement** between the parties to a dispute and once the aforesaid **settlement**/compromise fails and no compromise or **settlement** could be arrived at between the parties, the Lok Adalat has to return the case to the Court from which the reference has been received for disposal in accordance with law and in any case, the Lok Adalat has no jurisdiction at all to decide the matter on merits once it is found that compromise or **settlement** could not be arrived at between the parties.”

8.3. **(2008) 2 SCC 660** in the case of **State of Punjab and another Vs. Jalour Singh and Others**, the Hon'ble Supreme Court has held as follows:

“8. It is evident from the said provisions that the Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. A Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance, and puts its seal of confirmation by making an award in terms of the compromise or settlement. When the Lok Adalat is not able to arrive at a settlement or compromise, no award is made and the case record is returned to the Court from which the reference was received, for disposal in accordance with law. No Lok Adalat has the power to “hear” parties to adjudicate cases as a Court does. It discusses the subject-matter with the parties and persuades them to arrive at a just settlement. In their conciliatory role, the Lok Adalats are guided by the principles of justice, equity and fair play. When the LSA Act refers to “determination” by the “Lok Adalat and award” by the Lok Adalat, the said Act does not contemplate ~~not~~ require an adjudicatory judicial determination, but a non-



WEB COPY

adjudicatory determination based on a compromise or settlement, arrived at by the parties, with guidance and assistance from the Lok Adalat. The “award” of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decision-making process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by parties in the present of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat.

9.....The endeavour and effort of the Lok Adalats should be to guide and persuade the parties, with reference to principles of justice, equity and fair play to compromise and settle the dispute by explaining the pros and cons, strengths and weakness, advantages and disadvantages of their respective claims.

10. The Order of the Lok Adalat in this case (extracted above), shows that it assumed a judicial role, heard parties, ignored the absence of consensus, and increased the compensation to an extent it considered just and reasonable, by a reasoned Order which is adjudicatory in nature. It arrogated to itself the appellate powers of the High Court and “allowed” the appeal and “directed” the Respondents in the Appeal to pay the enhanced compensation of Rs.62,200 within two months. The Order of the Lok Adalat was not passed by consent of parties or in pursuance of any compromise or settlement between the parties, is evident from its observation that “if the parties object to the proposed Order they may move the High Court within two months for disposal of the appeal on merits according to law”. Such an Order is not an award of the Lok Adalat. Being contrary to law and beyond the power and jurisdiction of the Lok Adalat, it is void in the eye of the law. Such Orders which “impose” the views of the Lok Adalats on the parties, whatever be the good intention behind them, bring a bad name to the Lok Adalats and legal services.

12. It is true that where an award is made by the Lok Adalat in terms of a settlement arrived at between the parties (which is duly signed by parties and annexed to the award of the Lok Adalat), it become final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil Court, and no appeal lies against it to any Court. If any party wants to challenge such an award based on settlement, it can be done only by filing a Petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. But where no compromise or settlement is signed by the parties and the Order of the Lok Adalat does not refer to any settlement, but directs the



Respondent to either make payment if it agrees to the Order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat. The question of challenging such an Order in a Petition under Article 227 does not arise. As already noticed, in such a situation, the High Court ought to have heard and disposed of the appeal on merits.”

8.4. 2013 SCC Online Mad 223 in the case of *N.Baskaran and others*

Vs. D.Geetha wherein the Hon'ble Supreme Court has held as follows:

“10. Under Order V, Rule 19 C.P.C., it is important that Court should record a declaration of “due service” before it can proceed exparte. “Due service” is effective in bringing the claim to the knowledge of the Defendants. Service on the power of Attorney of Appellants cannot be said to be “due service”. In the Plaint documents, Respondent has filed the xerox copy of Power of Attorney (13.11.2009) executed by the Appellants infavour of M.Srinivasan. Even though Respondent has filed the xerox copy of Power of Attorney, service of summons on the Power of Attorney cannot be said to be “due service”. More so, when the Appellants claim that they have already cancelled the Power of Attorney (13.11.2009). In the said facts and circumstances of the case, we do not find any reason to doubt the statement of Appellants that they had knowledge of exparte decree only on 09.11.2011, when they were summoned by the Assistant Commissioner of Police, T.Nagar Range. After consent from the lawyer engaged by the Power of Attorney, Appellants have filed application (D.No.40597 of 2011) to set aside the exparte decree on 08.12.2011 which is well within the period of thirty days from the date of knowledge. Therefore, the Order of learned Single Judge cannot be sustained and liable to be set aside.”

8.5. 2009 5 L.W 73 in the case of *The Lakshmi Mills Co. Ltd., rep. By its Managing Director, 1100, Avanashi Road, Papanaiakanpalayam, Coimbatore – 641 037 Vs. R.Ramajaam and three others*, this Court has observed as follows:

“19. The application filed for obtaining permission to represent a



party in a Suit or other proceeding may be accompanied by an affidavit of the power agent, and the affidavit should contain a solemn affirmation that as per the power of attorney executed by the principal, he was authorized to sign the pleadings and to represent such principal. It should also contain averments that the power of attorney is still in force and to the best of his knowledge and information the same has not been revoked. The affidavit should contain such essential details, as otherwise, it would be impossible for the Court to decide the application.

20. The affidavit filed in support of the application in I.A.No.1060 of 2007 does not contain the details regarding the nature of agreement, the date of agreement and the scope of authority so as to enable the fourth Respondent to sign the pleadings and to represent Respondents 1 to 3 in the said suit. No such document was marked in I.A.No.1060 of 2007. In fact, the document was annexed to the Plaint as document No.20 and nothing was indicated in the Order as to whether the Trial Court has ever seen the said document. Therefore, there was total non application of mind and the learned trial Judge has mechanically allowed the application under Order 3 Rule 1 of the Code of Civil Procedure.”

9. The learned Counsel for the Revision Petitioner invited the attention of this Court to the adjudication recorded by the learned Additional District Munsif, Puducherry. The suit came up for hearing on 28.01.2014 on which date the first Defendant was present in Court. The summons were served on the first Defendant. It was recorded as D-2 to D-5 served through Power of Attorney. Subsequently, the case was adjourned to 18.03.2014 for filing Written Statement by Defendants 1 to 5. On 18.03.2014 it was recorded as follows:-

“Plaintiff present. Defendant No.1 present. Counsel for



CRP. No. 948 of 2020

Defendant not present. Hence, adjourned. Call on 31.03.2014 for written statement."

WEB COPY

10. The suit was filed showing first Defendant as Power of Attorney of Defendants 2 to 5. That itself creates doubt in the mind of the Court. Still the learned Additional District Munsif/Trial Judge ignored the provisions and mechanically allowed the Defendants to file Petition under Order III, Rule 2 of Civil Procedure Code r/w. Rule 16(1)(2) of Cr.P.C. r/w. 151 of CPC. The suit itself is hit by law of limitation. The prayer in the plaint is with regard to seeking to rectify the mutual mistakes mentioned in 'C' schedule in the partition deed dated 11.03.1976 a deed which is registered in 1976 in which the clause in the deed is sought to be rectified without issuing notice to the party to the partition deed and plaint itself having been filed by the first Defendant shown as Power of Attorney without any document as proof of Power of Attorney. Also the pleadings in the plaint indicates that they are attempting to amend the decree in O.S.No.238 of 1989 after a period of limitation. The suit as framed itself is not maintainable. The learned Judge failed to consider these aspects before numbering the suit. It is nothing but collusive suit. The pleadings indicates that there had been collusion between the Plaintiff and the first Defendant. Subsequent to the filing of the suit, the subject matter was referred to Lok Adalat. Based on Lok Adalat the decree



CRP. No. 948 of 2020

was passed which is found to be fraudulent. Therefore, the learned Senior Counsel seeks to set aside the same.

11. The learned Counsel for the Respondents invited the attention of this Court to the registered partition deed dated 11.03.1976 entered into between the family members of the first Defendant viz., Anandon Armand Joseph De Condappa as first party; Marie Therese De Condappa as second party; Marie Joseph Philomina Stanislos Tamban De Condappa @ Stanislos Tamban De Condappa as third party and Marie Therese Antonette Philomenammall as fourth party. The son of the said third party is the first Respondent in this Civil Revision Petition. In the partition entered into in the year 1976, the suit property was allotted between the father of the Respondents. Subsequently, the suit in O.S.No.238 of 1989 was filed on the file of the learned Principal Sub Judge, Pondicherry by Stanslaus Tambu De Condappa in which the first Defendant is Marie Therese De Condappa wife of De Condappa Anandou Arrnand Joseph which was a suit for partition in which the suit property was described as “6100 square feet in Re-Survey No.239/Pt, Town Survey No.47 & Patta No.1442 in Block 30 of Ward D and bearing Door West Dumas No.38 (Old No.33) of said Dumas Street, Situate to West of said Dumas Street, to North of Nataraja Chettiar House, to South of Nemur Ekke's



Family and to East of Condappa's House". The suit for partition ended in compromise and decree of compromise was passed by the then learned Principal Sub Judge, Pondicherry as per the judgment dated 29.04.2003 in the compromise memo it is stated as follows:

"3. The Defendant to acknowledge that the Plaintiff is the absolute owner in exclusive possession of Item No.1 of Schedule A (Door No.33 of Rue Dumas at Pondicherry) in the suit.

4. In view of the amicable compromise to end the present litigation and to avoid any future dispute on the properties in suit as between the parties here to or their Heir and legal representatives, the first Defendant herein solemnly agrees and declares that the property in Item No.05 of schedule 'A' (No.25 of Romain Rolland at Pondicherry) and the property in Item No.8 of schedule (Flat No.302 of Devkiran Apartment in Clarke road of Richards town Bangalore) shall be the absolute properties of the Plaintiff upon the demise of first Defendant mother and in pursuance of this joint compromise memo subject to the reserve of her (first Defendant) usufructuary right to receive the rents from the properties during life time and that the Plaintiff, his heir and legal representative shall have the right to receive Rents and obtain possession of said properties only upon and after the demise of the first defendant mother."

12. The Plaintiff in the suit in O.S.No.238 of 1989 is the grandfather of the Petitioner in this Civil Revision Petition. The Plaintiff in O.S.No.238 of 1989 is the father of the first Defendant in O.S.No.2368 of 2013. The father of the first Defendant – Stanislaus Thambu De Condappa had executed a settlement deed dated 29.04.2005 which was a registered document in favour of first Respondent Pratap Pierre Gerard De Condappa. It was a settlement deed in favour of the first Defendant in O.S.No.2368 of 2013



by the father of the first Defendant in favour of the first Defendant. A portion having an extent of 6100 sq. ft. in the settlement deed was settled in favour of the first Defendant in the suit. The learned Counsel for the Respondents also invited the attention of this Court to another settlement deed dated 17.12.2009 executed by Stanislaus Thambue De Condappa – the Grandfather of the Plaintiff and Defendants in O.S.No.2368 of 2013, in favour of the first Respondent in which it is stated as follows:

“In the Registration District of Pondicherry, in the Registration Sub District of Pondicherry, within Pondicherry Municipal Limits, Village No.40, in Pondicherry Revenue Village, the vacant land situated at Dumas Street, Pondicherry, comprised in Ward “D” Block No.30, T.S.No.47, R.S.No.239 Pt., Patta No.1442 measuring 15 Acres 32 Centiares. Out of this a portion of vacant site measuring 10384 sq. ft. only. Boundaries East of the property in T.S.No.46 and 48, West Dumas Street and Pratap Pierre Gerard De Condappa Property, North of the property in T.S.No.52 and 48 and South of the Property in T.S.No.43 and 45.”

13. The learned Counsel for the Respondents also invited the attention of this Court to the General Power of Attorney which is a registered document in which in clause 8, there is a reference to appearance in Civil and Criminal Courts and other judicial or quasi-judicial authorities. The relevant portion reads as under:

“8.To appear in civil and criminal courts and other judicial or quasi-judicial authorities and to petition for a receiving order or orders against any person and to prove any debt or debts due to us by virtue of the exercise of powers given under these presents.”



14. The learned Counsel for the Respondents subsequently mentioned the clause 10 which reads as under:

“10. To declare and affirm all Plaints, Written Statements, Applications, Petitions, Affidavits and other necessary documents in our names and on our behalf and to appear before any Judge, Magistrate or other officer empowered by law to hear any suit or proceedings or any other inquiry relating to any of the matters relating to us or in which we may be intended and also to give statements and evidence on our behalf.”

15. The suit in O.S.No.2368 of 2013 on the file of the learned I Additional District Munsif, Pondicherry was filed by Pratap Pierre Gerard De Condappa seeking mandatory injunction. In the said plaint, all the details had been clearly described in paragraphs I to VI and there is no suppression of facts. Also, he invited the attention of this Court to the prayer in the suit in O.S.No.2368 of 2013 which reads as under:

“(a) Pass a Decree of Mandatory Injunction directing the Defendants to rectify the mutual mistake mentioned in the suit C-schedule i.e., insert to an extent of 16,484 sq. feet instead of 6,100 Sq. feet in the B – schedule property of the Registered Partition Deed dated 11.03.1976 vide Document No.405/1976 registered on the file of Pondicherry Sub Registrar and thereby to execute Rectification Deed in favour of the Plaintiff and that in the event of their failure thereon direct the execution and registration of such Rectification Deed through Court to and in favour of Plaintiff;

(b) Directing the Defendants to pay costs of this suit;

(c) And pass such other relief as this Hon'ble Court may deem thinks fit and necessary in the circumstances of this case.”

16. Subsequently a petition in I.A.No.27 of 2015 in O.S.No.2368 of 2013 was filed under Section 89 of C.P.C. r/w Section 20(1) of the Legal



Services Authorities Act, 1987 to refer the suit in O.S.No.2368 of 2013 to the Hon'ble Lok Adalat for the purpose of negotiating the matter and to recording the settlement as per law and procedure. Another Petition in I.A.No.379 of 2014 to appoint Power of Attorney was also filed as per the provisions of Civil Revision Petition and it was allowed. Only then, it was referred to Lok Adalat. The learned Counsel for the Respondents also invited the attention of this Court to the Petitioner's type set at page 74 wherein the Lok Adalat has passed the decree which reads as under:

"It is ordered and decreed:

1. That the suit be and the same is decreed without cost as settled out of court in terms of the Joint Compromise Memo.

2. That the court fee of Rs.30.50 (Rupees Thirty and fifty paise only) paid by the Plaintiff is ordered to be refunded to the Plaintiff as per Rule 33 of the Union Territory of Puducherry Legal Services Authorities Rules, 1998, as amended by the Union Territory of Puducherry Legal Services Authority (Amended) Rules, 2007.

3. That this Award of the Lok Adalat shall be deemed to be a decree of the Civil Court as per Section 21 of the Legal Services Authorities Act, 1987."

17. Also, the learned Counsel for the Respondents invited the attention of this Court to the joint Compromise Memo filed by the Plaintiff and the Defendants in O.S.No.2368 of 2013 a copy of which is found in the typed set of papers. The Lok Adalat decree was registered with Sub Registrar Office.

Also the learned Counsel for the Respondents invited the attention of this



CRP. No. 948 of 2020

Court to the Deed of Revocation of Power of Attorney by the Petitioner in this Civil Revision Petition/5th Defendant in the suit which was executed on 5th August 2015. Misuse of Power of Attorney was not mentioned while revoking the Power of Attorney. The learned Counsel for the Respondents invited the attention of this Court to the legal notice on behalf of the Revision Petitioner in this Civil Revision Petition to her father. There also the reasons for revocation of Power of Attorney in favour of the father by the daughter had not been stated. The Rectification Deed was also executed by the Plaintiff in O.S.No.2368 of 2013. The Petitioner in this Civil Revision Petition and the Respondents 2 to 4 had filed O.S.No.2459 of 2014 against the Plaintiff in O.S.No.2368 of 2013 for the same relief which reads as under:

“(a) Pass a Decree of Mandatory Injunction directing the Defendant to rectify the mutual mistake mentioned in suit C-schedule i.e., insert to an extent of 15,338 Sq. feet instead of 10,800 Sq. feet as found in the suit A – schedule property by virtue of a Registered Partition Deed dated 11.03.1976 vide Document No.405/1976 registered on the file of Pondicherry Sub Registrar and thereby to execute Rectification Deed in favour of the Plaintiffs' and that in the event of the failure thereon direct the execution and registration of such Rectification Deed through the Court and in favour of the Plaintiffs;
(b) Directing the Defendant to pay costs of this suit;
(c) And pass such other relief as this Hon'ble Court may deem thinks fit and necessary in the circumstances of this case.”

18. The Revision Petitioner herein and her brother filed suit in O.S.No.31 of 2016 against her parents and sister before the learned III Additional District Judge, Pondicherry seeking decree of partition of the suit



properties into five equal shares in which the properties are mentioned as follows:

“ *"A" SCHEDULE OF PROPERTY*

1. Pondicherry District Registrar, Pondicherry Sub-Registrar, Pondicherry Romain Roland Street, house Nos. 2, 3, 4, 6 of two store building along with six shops to an extent 15,337 Sq. feet (value approximately sum of Rs. 2,00,00,000/-)

Boundaries:

Mahe de Labourdonnais Street are on the west of Romain Roland Street, on the south of Mahe de Labourdannis on the north of the House of The estate of Madam Gnanadicon, on the East of The Chamber of Commerce.

2. Pondicherry District Registrar, Pondicherry Sub-Registrar, situated at Pondicherry Bazar Saint Laurant Street, Shop No.7 to an extent 60 Sq. Feet (value approximately sum of Rs. 20,00,000/-)

Boundaries:

Bazar Saint Laurant Street at the north of the said street, at the East of Romain Rolland Street, at the South of the House of Gressieux and at the West of the shop of Guerre.

3. Tamil Nadu, Villupuram District, District Registrar Thindivanam, Vanur Sub-Registrar, Panchyaty Limit in Villupuram revenue district, Vanur Taluk, at Kottakuppam town panchyat limit, Kottakuppam revenue village, Old survey number 144/3, R.S No. 361 to an extent 1325 Sent or 5777sq feet. (Value approximately sumo of Rs. 10,00,000/-)

Boundaries:

On the North by the land of Anto Joseph, on the south by Land of Sri Aurobindo Society, on the East of Sri Aurobindo Society, on the West by land belongs to Sajo Jose.



CRP. No. 948 of 2020

"B" SCHEDULE PROPERTY

WEB COPY

1. Are equal share in the means Profit of hotel business name and style of "Qualthe Hotel" Bar and Restraint with Bar License and rental income from Door No.6, Roman Rolland street, Pondicherry approximately sum of Rs. 1, 64,000/- for every month.

2. Diamond neck band, one pair of diamond bangles, one pair of diamond ear studs, One Diamond pendent with gold chain and other items value approximately sum of Rs. 1,00,000/-.

3. Antiques Nos.50 available at Marie Therese Antoinette Philomenammalle De condappa @ Philomena Rajarathnam wife of Philomena Francis Gerard Rajarathnam value approximately sum of Rs. 1,00,000/-."

19. In this suit, all the properties are not mentioned. Also the Plaintiff in O.S.No.2368 of 2013 Pratap Pierre Gerard De Condappa the brother of the Revision Petitioner had filed HRCOP No.40 of 2007 through his Power of Attorney Philomena Francis Gerard Rajarathnam/second Respondent in this Civil Revision Petition. The said Rent Control Petition was allowed directing the tenants to vacate and hand over possession. Based on which E.P.No.9 of 2017 in HRCOP No.40 of 2007 was filed before the very same Court by the brother of the Revision Petitioner. The execution was also ordered. Subsequently, the Revision Petitioner herein had filed E.A.No.130 of 2019 in E.P.No.9 of 2017 in HRCOP No.40 of 2007 in which affidavit filed by the Revision Petition claims as follows:

"I came to understand that order of delivery has been ordered by this Hon'ble Court in the above matter ad measuring an extent of G100 sq feet but the 1st Respondent using this Hon'ble Court order us if sword as against me and attempted to take physical possession admeasuring



WEB COPY

an extent of 16484 sq. ft of my property, the action of the 1st Respondent with help this Hon'ble Court Amien to take physical possession of my property 10384 Sq. Feet-out of total extent of 16484 sq feet is wrong and erroneous. It is submitted that admittedly the 1st Respondent/decreed holder having 6100 sq. ft undivided share from and out of 16484 sq feet. Hence the Respondent attempted to take physical possession of my property measuring an extent of 10384 Sq. Feet belong to me is causing great prejudice. Hence, I am consrained to file the above petition before this Hon'ble Court to adjudicate my right involved in this subject property.”

20. At the time of execution, the Revision Petitioner and the Respondents colluded. The obstruction petition was dismissed. The learned Counsel for the Respondents invited the attention of this Court to the final paragraph of the order dismissing the obstruction petition filed by the Revision Petitioner which reads as follows:

“7. The petitioner filed O.S. No.202/2019 seeking various relief and also partition. If the petitioner has right over the property after the verdict of O.S. No.202/2019, he will keep recover the property from the 1st respondent. In this case, on this stage, the petitioner has no right to agitate to hand over the possession as per the decree. The petitioner claim right over the property before the appropriate forum of Hon'ble II Additional District Court, Puducherry on the verdict of O.S. No.202/2019. The petitioner has no right to restrain the execution of decree.”

21. Also the learned Counsel for the Respondents invited the attention of this Court to the suit in O.S.No.202 of 2019 filed by this Revision Petitioner against her mother, father, brothers and sisters before the learned Principal District Judge, Pondicherry in which also she claims preliminary decree for partition. In this suit the Plaintiff in O.S.No.2368 of 2013 and the subject matter of this Civil Revision Petition the same Plaintiff is the second



CRP. No. 948 of 2020

Defendant in O.S.No.202 of 2019. The learned Counsel for the Respondents invited the attention of this Court to the 'B' schedule property in O.S.No.202 of 2019 filed by the Revision Petition. It is the contention of the learned Counsel for the Respondent that this Civil Revision Petition lacks merit and is to be dismissed as the petition filed by her obstructing to the execution petition was dismissed by the learned Rent Controller only after that dismissal of E.A. And E.P.No.9 of 2017 in HRCOP No.40 of 2007 this Civil Revision Petition had been filed. It is vexatious and it has to be dismissed as having no merits.

22. Heard the learned Counsel for both sides and perused the materials placed on record.

23. On consideration of the entire materials placed before this Court, it is evident that a compromise has been arrived at among the parties without consensus. This is more so that the Petitioner has already filed two suits as against the Respondents herein in O.S. No. 31 of 2016 and O.S. No. 202 of 2019 for partition and they are pending on the file of Additional District Court at Puducherry. While so, in all fairness, those two suits also have to be subjected to a compromise, but they were left out. In any event, when the Petitioner complained that without her knowledge or consent the compromise



CRP. No. 948 of 2020

has been arrived at, this Court cannot shut its eyes and hold that the compromise is valid. Furthermore, the learned Senior Counsel for the Petitioner specifically contended that no summons has been issued to the Revision Petitioner in the suit and the Court below did not conduct any enquiry as to whether the Petitioner is willing for the settlement. In such circumstances, as per the reported ruling **2013 SCC OnLine Mad 223** in the case of ***N.Baskaran and others -vs- D.Geetha*** the submission of the learned Senior Counsel for the Revision Petitioner regarding service of summons on Defendant No.5 is accepted by this Court. As per the ruling in **2009-5-L.W-73** in the case of ***The Lakshmi Mills Co. Ltd., represented by its Managing Director -vs- R.Ramajaam and three others***, the settlement arrived at with Defendant No.5 on the basis of the Power of Attorney of Defendant No.5 is found unacceptable and not as per law.

24.The Plaintiff had instituted the suit stating Defendants 2 to 5 represented by the Power of Attorney/the first Defendant. In the document filed along with the plaint no affidavit by the Plaintiff is filed seeking permission of the Court to appoint the first Defendant as Power of Attorney of the fifth Defendant or the Plaintiff had not enclosed any copy of the Power of Attorney deed executed independently by Defendants 2 to 5 appointing the



first Defendant as Power of Attorney with supporting document/registered power of attorney deeds or copy of the Power of Attorney deed executed independently by Defendants 2 to 5 in favour of the first Defendant was enclosed along with the plaint. Therefore, in the absence of such document enclosed along with the Plaint, the filing of the suit showing the first Defendant as Power of Attorney of Defendants 2 to 5 is not found acceptable as per the provisions of Code of Civil Procedure.

25. The suit instituted by the Plaintiff showing the first Defendant as Power of Attorney of Defendants 2 to 5 is found unacceptable in the eyes of law as per the reported ruling of this Court in **2009-5-L.W. 73 [The Lakshmi Mills Co., Ltd., v. R.Ramajaam and three others]**. Therefore, framing of the suit itself is found fictitious and fraudulent. It is not for the Plaintiff to state that the Defendants 2 to 5 are to be represented by first Defendant. The Plaintiff is within his right to institute the suit through Power of Attorney but he cannot insist who is the Power of Attorney for the Defendants. That itself gives a presumption that the suit is collusive. Further on the perusal of the plaint, it is found that the relief sought is with regard to the decree already passed in 1984 based on which mandatory injunction is sought which is hit by law of limitation. Therefore, as rightly pointed out by the learned Senior



CRP. No. 948 of 2020

Counsel for the Revision Petitioner, the suit itself is found not maintainable.

The learned Judge failed to apply law to the facts of the case and had mechanically numbered the suit without considering the averments in the plaint.

26. On 31.03.2014 first Defendant on behalf of Defendants 2, 3 and 4 and the fourth Defendant for himself had made endorsement that they have no objection to decree the suit as prayed. Further, on 17.12.2014 when it was posted for written statement, the learned Counsel for the Plaintiff filed Petition under Section 89 of CPC which was numbered as I.A.No.27 of 2015 and it was allowed on 12.01.2015 and referred to Lok Adalat on 12.01.2015. From 12.01.2015 it was repeatedly adjourned awaiting report from Legal Services Authority and on 01.08.2015 it was recorded as follows:

“Await Report from Legal Services Authority (Ref No.488/15 UTPLSA the case has been settled through continuous Lok Adalat)

Matter settled before continuous Lok Adalat Communication as referred above received from Member Secretary of UTPLSA Counsel for plaintiff filed memo along with the copy of award passed by the Lok Adalath held on 24.04.2015. In view of the said Lok Adalath decree, no further proceedings is defined for this case and hence, closed.”



CRP. No. 948 of 2020

The entire exercise is found collusive.

WEB COPY

27. The first Defendant had made endorsement on behalf of the Defendants 2, 3, 5. The petition under Section 89 of CPC was filed by the Plaintiff along with affidavit of the Plaintiff on 17th December, 2014. Even before taking summons to the Defendants, the Petition was numbered as I.A.No.27 of 2015. Only subsequently, the petition filed by first Defendant under Order III, Rule 2 of CPC seeking permission of the Court appointing him as Power of Attorney is numbered as I.A.No.397 of 2014 which was also filed along with affidavit dated 31.03.2014. That exposes the collusion between the Plaintiff and the first Defendant who are none other than the father and son. The affidavit filed by the first Defendant along with Petition under Order III, Rule 2 of CPC dated 31.03.2014 and I.A. was numbered as I.A.No.379 of 2014 in O.S.No.2368 of 2013 in which the copy of the Power of Attorney deed of second Defendant/Stanislas Francois Vincent Noel Jacques and copy of the Power of Attorney deed in favour of the third Defendant/Mark Teilhard Charles Fernand and the copy of the Power of Attorney deed in favour of the Marie Therese Anandi Vanina/the Petitioner herein were enclosed by the first Defendant. When the suit was posted on 31.03.2014, it was advanced to 18.03.2014 which exposes the collusion between the Plaintiff



CRP. No. 948 of 2020

and the first Defendant. When the Petition was numbered on the same day, the learned Counsel for the opposite parties had made endorsement that they had no objection, the Petitioner filed Petition under Section 89 of CPC was allowed as having no objection. The Petition under Order III, Rule 2 of CPC was allowed without objection which proves the allegation that it was a collusive suit. When the framing of the suit itself is not maintainable, as per the averments in the plaint that the first Defendant/father had colluded with the son/Plaintiff thereby defeating the earlier decrees obtained from the Court based on which partition deed was executed between the parties, which was registered on 11.03.1976, which is sought to be altered without the knowledge of the principal and behind the back of the principal by exercising the Power of Attorney. It is to be noted that the suit was posted for service of summons on 31.03.2014 while so the affidavit was prepared on 17.12.2013 even before service of summons. The learned District Munsif failed to consider these important points and had mechanically allowed the petition.

28. The Petition in I.A.No.27 of 2015 in O.S.No.2368 of 2013 is filed by the the Plaintiff/Pratap Pierre Gerard De Condappa. The affidavit is drafted on 17.12.2013 even before the service of summons. I.A.No.379 of 2014 is the affidavit of the first Defendant seeking permission of the Court

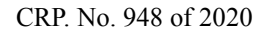


CRP. No. 948 of 2020

under Order III, Rule 2 of CPC r/w. Rule 19(1)(2) of Civil Rules of Practice
r/w Section 151 of CPC where also the affidavit is sworn on 31.03.2014.

29. When the suit filed by the Plaintiff itself is not maintainable, as he seeks mandatory injunction to amend the extent in the partition deed executed and registered in the year 1976. Further on perusal of the plaint, it is found that already partition suit filed in the year 1989 was decreed. After several years in the year 2013 the suit is instituted. Therefore, the framing of the suit itself is not maintainable. It is hit by law of limitation.

30. Further, I.A.No.27 of 2015 filed under Section 89 of CPC before service of summons by the Plaintiff seeking that there is amicable settlement as on 17.03.2013. Only after entering through Counsel the first Defendant had filed the Petition in I.A.No.379 of 2014 under Order III, Rule 2 of CPC seeking to appoint him as Power of Attorney for Defendants 2, 3 and 5. Even before service of summons the Plaintiff had indicated in the plaint that the first Defendant is the Power of Attorney for Defendants 2 to 5 which was mechanically numbered by the learned Judge without considering the averments in the plaint which is found collusive, fictitious raising so many doubts. By filing this suit itself is not at all maintainable, the Plaintiff had



31. In the light of the reported ruling in **2021 SCC OnLine 898** in the case of ***Estate Officer -vs- Colonel H.V.Mankotia (Retired)*** and **(2008) 2 SCC 660** in the case of ***State of Punjab and another -vs- Jalour Singh and***



CRP. No. 948 of 2020

Others, the alleged settlement arrived at in the Lok Adalath is also found not as per law. The suit filed by the first Respondent as Plaintiff was posted for service of summons on 31.03.2014. Before the first hearing date the Defendants 1 to 5 through their Power of Attorney filed vakalath and through Counsel and made representation to advance the hearing of the suit from 31.03.2014 to 18.03.2014 and requested to refer the dispute to Lok Adalath. The entire exercise is found to be not as per the procedures of the Lok Adalath and fair procedures as per Code of Civil Procedure. The indecent haste in which the suit which was disposed as settled in Lok Adalath is found to be unfair in the principles of fairness, equity, good conscience which governs the Civil Court in granting relief. Therefore, the argument of the learned Counsel for the Respondents that the Defendant No.5 turned around and filed this petition is found unreasonable, unacceptable and hence rejected.

32. In such circumstances, the decree passed by the Trial Court, on the basis of the so-called compromise arrived at before the Lok Adalat cannot be sustained. When once the Revision Petitioner has made specific allegations that she was not issued summons, she has no knowledge about the compromise and that she had not authorised the first Defendant to represent her in the suit, still this Court cannot insist and compel the Petitioner/fifth Defendant to



CRP. No. 948 of 2020

accept the compromise. It is needless to mention that when a compromise is worked out, it should be with the consent, consensus and knowledge of all the parties to the compromise. A compromise should not be unilateral and it should be bilateral.

In the result, **this Civil Revision Petition is allowed.** The order dated 24.04.2015 passed in Lok Adalat Case No.3483 of 2015 before the Lok Adalat at Puducherry in connection with O.S.No.2368 of 2013 on the file of the I Additional District Munsiff, Puducherry, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

29.09.2023

dh/srm

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The I Additional District Munsiff,
Puducherry.

2. The Section Officer,
V.R.Section,
High Court, Madras.



WEB COPY



CRP. No. 948 of 2020

SATHI KUMAR SUKUMARA KURUP, J.

dh/srm

Order made in
CRP.No.948 of 2020

29.09.2023