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W.P.No.22118 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.03.2023**

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.22118 of 2021

S.Ramya

... Petitioner

Vs

1.V.Seethalakshmi
2.G.Narayanaswamy
3.G.Senthilkumar
4.Krishnakumar
5.Vijayalakshmi
6.Usharani
7.Deepa
8.Kavitha
9.Vilashini
10.Jayalakshmi

11.The District Legal aid Authority
Coimbatore- 641 001.

12.The Sub Registrar
Coimbatore.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the award passed in Lok Adalath before the 11th respondent on 20.12.2019 in suit in O.S.No.36 of 2010 on the file of District Judge, Coimbatore, based on the joint compromise decree entered and filed by respondents 1 to 8 and to quash the same and consequently direct the 12th respondent to delete the entry in No.215 of 2020.



W.P.No.22118 of 2021

For the Petitioner : Ms.Kanimozhi Mathi

For the Respondents : Mr.G.K.Muthukumar,
for respondents 1 to 3

Mr.A.Sundaravadhanam,
for respondents 6 and 7

Mr.H.vijayakumar,
for the 10th respondent

ORDER

The writ petition has been filed in the nature of a certioraried mandamus seeking interference with the Award of the Lok Adalat dated 20.12.2019 in O.S.No. 36 of 2010 which suit was pending on the file of the IV Additional District Court at Coimbatore.

2. The writ petition has been filed by a third party to the suit but who claims right and title to a portion of the properties mentioned in the suit schedule.

3. The brief facts are that there were three properties which were the subject matter of O.S.No. 36 of 2010. The first property was at Vaisiyal Street, Coimbatore. That was described as Item No.1. It was to an extent of 2907 square feet. The second property was at Raja Veedhi Street, Coimbatore. It was to an extent of 1007 square



W.P.No.22118 of 2021

feet. The third property was also at Raja Veedhi street and measured an extent of 3956 square feet. The suit has been filed seeking partition and separate possession of the said suit properties. All the three properties originally belong to Narayana Asari. It is not in dispute that the said suit properties were his self acquired properties. He died intestate on 29.10.1992. He left behind two sons Subramanian and Govindarajan and and one daughter Vilasini. His wife had predeceased him. On his death, since the properties were his self acquired properties, each one of the two sons and the daughter were entitled to an undivided $1/3^{\text{rd}}$ share in each one of the three properties.

4. The suit had been filed by the widow and two sons of Govindarajan. The 1 to 6 were the legal heirs of the other son, Subramanian. The daughter Vilasini was the 7th defendant in the suit. This would indicate that the plaintiffs were entitled to an undivided $1/3^{\text{rd}}$ share in each one the three properties, the 1st to 6th defendants were also entitled to an undivided $1/3^{\text{rd}}$ share in each of the three properties and the 7th defendant was entitled to an undivided $1/3^{\text{rd}}$ share in each one of the three properties.



W.P.No.22118 of 2021

5. During the arguments before this Court, it had been stated that the seventh defendant, Vilasini, the daughter had relinquished her undivided $1/3^{\text{rd}}$ share to the plaintiffs/legal heirs of Govindarajan. This would indicate that the legal heirs of Govindarajan, were entitled to an undivided $2/3^{\text{rd}}$ share in each one of the three properties. The legal heirs of the other son Subramanian were entitled to an undivided $1/3^{\text{rd}}$ share in each one of the three properties. The suit was therefore laid for partition and separate possession, for an undivided $2/3^{\text{rd}}$ share in the suit properties and consequential reliefs.

6. In the meanwhile, the husband of the petitioner herein, N.S.B. Sankar had entered into an agreement of sale with the 3^{rd} defendant Jayalakshmi. It must be stated that Jayalakshmi, on that date could have reasonably claimed a right, title and interest to an undivided $1/18^{\text{th}}$ share in each one of the three properties. However, in the agreement of sale, the schedule was given as undivided $1/6^{\text{th}}$ share in item No.3 property/the property at Raja Veedhi Street which measured 3956 square feet.

7. It is the claim of the learned counsel for the petitioner that substantial consideration was also paid at the time of entering into the



W.P.No.22118 of 2021

agreement of sale. Subsequently by another document the other legal heirs of Subramanian, who were 1st, 2nd, 4th, 5th and 6th defendants also entered into what may be called a deed of undertaking, namely they also agreed to abide with the agreement of sale entered into by the 3rd defendant, Jayalakshmi. The veracity of that particular document was however to put to challenge. I will leave that aspect aside as I am not here to decide that particular issue. Subsequently, a sale deed had been executed by the 3rd defendant, Jayalakshmi on 29.12.2016 with respect to the property mentioned in the agreement of sale in favour of the petitioner S.Ramya, who is the wife of N.S.B. Sankar.

8. It must also be stated that N.S.B. Sankar, in view of the complicated relationship among the plaintiffs and the defendants in the suit and having entered into an agreement of sale, had filed O.S.No. 498 of 2014 seeking an order of injunction not to alienate the said property. In that particular suit, a specific schedule was given. It was with respect to a portion of the property at Raja Veedhi Street.

9. For good measure, the petitioner herein had filed O.S.No. 1399 of 2019 against the legal heirs of Subramanian, who were the 1st



W.P.No.22118 of 2021

to 6th defendants in O.S.No. 36 of 2010. In that suit, she sought permanent injunction to protect possession. In that particular suit, a schedule had been given but it had been stated that it was undivided 1/6th share in the property at Raja Veedhi Street measuring 3335 square feet.

10. In O.S.No. 36 of 2010, a preliminary decree was passed on 18.07.2017. That preliminary decree was further questioned by filing an appeal in A.S.No. 253 of 2018. A Division Bench of this Court before whom the first appeal came up, set aside that preliminary decree and directed evidence to be let in. The parties therefore went back to the trial Court, wherein, on the basis of a memo filed by the learned counsels, the learned IV Additional District Judge then referred the same for settlement before the Lok Adalat.

11. It is the specific contention of the learned counsel for the petitioner herein that the petitioner was not impleaded as a party to the suit even though the other parties namely the plaintiffs and defendants knew about the agreement of sale in view of the fact that O.S.No. 498 of 2014 had been filed by the husband of the petitioner herein. The petitioner had also filed O.S.No. 1399 of 2019. It is stated



W.P.No.22118 of 2021

that the third defendant/vendor of the undivided 1/6th share was also not represented when the matter was actually referred to Lok Adalat.

12. The matter was referred to the Lok Adalat wherein a compromise memo dated 03.12.2019 was filed. In that compromise memo, the signatories were the three plaintiffs/legal heirs of Govindarajan who claimed an undivided 2/3rd share and the five defendants leaving out the 3rd defendant Jayalakshmi/vendor.

13. It is quite unfortunate that even the IV Additional District Judge did not examine whether all the parties were represented and did not examine the issue that one of the defendants, Jayalakshmi, the 3rd defendant who had actually conveyed her share namely an undivided 1/6th share to the petitioner/husband of the petitioner herein was not a party to the proceedings or to the compromise memo.

14. The learned IV Additional District Judge also did not enquire whether the properties were actually available for partition. That should be the first step to have been taken whenever a compromise memo is filed in a pending suit and parties agree for division in a particular manner.



W.P.No.22118 of 2021

15. The learned IV Additional District Judge should have examined whether the property was available for such partition. That could have been easily verified by asking one of the parties to the suit to produce the encumbrance certificate. As stated the suit was filed in the year 2010 and the compromise memo had been presented in the year 2019.

16. In between, in the year 2016, there had been a sale of a portion of the very property which was the subject matter of compromise. Had the judicial officer been a little more alert, then the subsequent events could have been averted. Notice could have been issued to the purchaser and his views on the same could have been gathered and he could have also joined in the compromise delineating the particular portion for which he had paid consideration and which he claims he had purchased. Thereafter for the rest of the portions, the parties could have entered into a compromise. This step not having been taken and there having been no division of the properties by metes and bounds, there is always a possibility of one of the parties being allotted the portion of the petitioner herein which had been purchased by her/husband.



W.P.No.22118 of 2021

17. It is the specific grievance raised by the learned counsel for the petitioner that the petitioner/husband had invested heavily in the portion which they had purchased and which was an undivided 1/6th share in item 3 of the suit schedule property and had also taken possession which is evident from the suit O.S.No. 1399 of 2019 filed by the petitioner herein seeking protection of possession. The petitioner/husband was then forcibly removed from possession and dispossessed. It was only thereafter that further inquiries were made, and then it was found that after omitting the 3rd defendant, the other parties to the suit had entered into a compromise. Even though it could be stated that the mistake laid on the parties who presented the compromise memo, I would still reiterate that a duty was also cast on the Presiding Officer of the Court to examine whether all the parties to the suit were represented in the compromise memo.

18. In a suit for partition and separate possession, every party to the suit has a share in the property. It may be a small fraction. It may be a considerable portion. But still that party should not be omitted. The general principle is that in any a suit for partition wherein a coparcener or co-owner or anybody who has a share either remotely or otherwise is omitted, the suit itself could be interfered with.



W.P.No.22118 of 2021

Similarly if one of the properties are left out and the suit is proceeded with, still the suit could be interfered with.

19. The third defendant, Jayalakshmi was neither a party to the compromise memo nor were her opinion sought before the matter was referred to the Lok Adalat nor was she a signatory to the compromise memo nor was any portion allotted to her under the compromise memo nor was any inquiry made as to why she was absent and why she did not sign in the compromise memo.

20. It is however contended by the learned counsel for the respondents who appeared before this Court that the compromise provided for that contingency and that it did not include the property dealt with by her. When the properties had not been divided by metes and bounds, she should have been made a party and she should also have been heard with respect to the particular portion which could be allotted to her.

21. The preliminary decree or a compromise leading to a preliminary decree is only one half of the procedure in a suit of partition. Subsequently, the property will have to be divided in



W.P.No.22118 of 2021

accordance with the shares and when it is divided, each party has a right to present their views on the nature of such division. The omission of the 3rd defendant Jayalakshmi directly affected the sanctity of the compromise decree.

22. It is stated by the learned counsels for the respondents herein that the compromise decree could be set aside to that portion to which the 3rd defendant Jayalakshmi was entitled to and the agreement among the other parties could be affirmed by this Court.

23. The facts related above makes it very clear that the compromise memo had been effected in the absence of the 3rd defendant which also implies that the interest of the petitioners had not been protected by the Court. Once that is established as a fact, this court has no other option but to interfere with the compromise decree.

24. The writ petition has been filed seeking interference with compromise decree dated 20.12.2019 which was an award of the Lok Adalat.



W.P.No.22118 of 2021

25. When a compromise degree suffers owing to lack of participation by all the parties, then a writ petition under Section 226 is maintainable and the Court can examine that aspect and set aside the compromise decree.

26. Once this conclusion has been reached out, the interests of all the parties should now be examined by this Court.

27. From the statements made by, the following could be discerned:

a) The petitioner herein had paid substantial consideration for purchase of 1/6th undivided share in item 3 of the suit property.

b) The plaintiffs in the suit had also paid amounts towards consolidating their share in the suit properties.

28. These aspects will now have to be re-examined by the trial court.

29. The petitioner is granted liberty to file necessary application seeking to implead herself as a party defendant in O.S.No. 36 of 2010 which would necessarily have to be restored back to file in view of the



W.P.No.22118 of 2021

compromise decree dated 20.12.2019 being set aside.

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30. If such an application is filed by the petitioner herein, I am confident that the learned IV Additional District Judge would examine it on the basis of the averments made. If the impleading petition is allowed no decree relating, to the three properties can be passed in the absence of the petitioner herein. If the petitioner is impleaded as a defendant, the petitioner must be given opportunity to present a written statement giving the details of the agreement of sale, the subsequent undertaking by the other defendants/legal heirs of Subramaniam, the sale deed, the taking of possession, the fact of dispossession and the investments made.

31. Naturally when such a written statement is filed, the plaintiffs in the suit, may, also be permitted to file a reply statement to present additional facts namely the amounts which they had paid consequent to the compromise memo or as a precondition for the other parties to enter into the compromise memo and to seek adjustment of the share of the property in accordance with such amounts paid. These issues can be examined only by the trial court. To examine all these issues, it may not be proper I would set aside

13/16



W.P.No.22118 of 2021

the compromise decree and give a right to the parties to raise all such issues before the trial court.

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32. If such contentions are raised, the learned Trial Judge/learned IV Additional District Judge may appreciate them in proper light. The suit will necessarily have to be restored. Various other contentions were raised before me regarding the admissibility of documents which had been mentioned in the course of their order but those are issues which will have to be raised only before the trial court and every document will necessarily pass the tests of admissibility, relevancy, proof and genuinity.

33. I am confident that the learned IV Additional Judge would test each document accordingly.

34. In effect in the present writ petition, the Award passed by the Lok Adalat in O.S.No. 36 of 2010 dated 20.12.2019 is set aside. The terms of the Award can still be examined by the learned IV Additional judge to the extent to which it granted rights to various parties but while examining those aspects, the learned IV Additional Judge may also keep in mind that there has been sale deed to an



W.P.No.22118 of 2021

extent of undivided 1/6th share in item 3 property and that the purchasers therein should not be omitted while deciding about the division of all the three items of the suit property.

35. The Writ Petition stands disposed of. No costs. Consequently, WMP No.23340 of 2021 is closed.

01.03.2023

Index: Yes/no
mrn

To
1.The District Legal aid Authority
Coimbatore- 641 001.

1.The Sub Registrar
Coimbatore.



WEB COPY



W.P.No.22118 of 2021

C.V.KARTHIKEYAN, J.
(mrn)

W.P.No.22118 of 2021

01.03.2023