



CRP (MD) No.898 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	18.07.2023
Pronounced on	10.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.898 of 2022

and

CMP(MD)No.3584 of 2022

Arunachala Mankondar

... Petitioner

Vs.

1.Gnanavel

Murugaiah Poiundar (died)

Velayutham (died)

Karuppiah Servai (died)

Ammalu (died)

Muthusamy Mankondar (died)

2.Visalakshi Ammal

Velayutham (died)

3.Karupayyah @ Pannerselvam

4.Shanthi

Thangachiammal (died)

5.Vairammal

6.Selvi



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Vasantha (died)

7.Banumathy

8.Anjali Devi

9.Ravichandran

10.Manikandan

11.Viswanathan

12.Padmavathy

13.Somasundaram

14.Ramalingam

15.Saroja

16.Murugan

17.Karthik

18. Selvi

19.Mayil

20.Rajathi

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.90 of 2022 in O.S.No.342 of 1990, dated 25.03.2022, on the file of District Munsif Court, Aranthangi.

For Petitioner : Mr.V.K.Vijayaragavan

For R1 : Mr.K.K.Senthil



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For R3, R4, R6, R8, R12,
R13, R15, R16, R18, R19 & R20 : No appearance

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ORDER

This civil revision petition is preferred as against the order passed in I.A.No.90 of 2022 in O.S.No.342 of 1990 dated 25.03.2022 on the file of the District Munsif Court, Aranthangi.

2. The petitioner filed the above application for dismissing the suit in O.S.No.342 of 1990. The suit is barred under Order 23, Rule 3 of CPC for the reason that once a compromise decree was passed between the parties and the decree of compromise recorded cannot be set aside subsequently by a party filing a separate suit as though the decree was illegal. Even assuming that the decree is not enforceable due to illegality, the plaintiff has to work out his remedy in the same suit in which compromise was entered and recorded by the Court. However, the trial Court erroneously dismissed the application filed by the revision petitioner under Order 7 Rule 11(d) of CPC by stating that the above application was filed belatedly. Aggrieved by this, the present revision is preferred.



3. The learned counsel appearing for the revision petitioner would submit that all issues relating to compromise including the validity of the compromise can be considered only by the Court which had granted the decree of compromise. Therefore, an independent suit challenging the lawfulness of such compromise decree, is not maintainable. The person questioning the lawfulness of compromise, must approach the same Court, which recorded the compromise. To support his contention, he has relied upon the judgments of the Hon'ble Supreme Court in Civil Appeal Nos. 10416-10417 of 2014, Civil Appeal No.439 of 2022 with Civil Appeal Nos. 440-441 of 2022, Appeal (Civil) No.2896 of 2006 and Civil Appeal No.3961 of 2010.

4. On the other hand, the learned counsel appearing for the first respondent would submit that if a decree is obtained on account of gross-negligence on the part of the next friend of the minor in the previous suit, it is permissible to file a suit to set aside the decree on the ground of gross-negligence on the part of his next friend.

5. Heard on both sides and records perused.



6. The plaintiff in O.S.No.22 of 1972 on the file of the Sub Court, Thanjavur, in which a compromise was entered between the parties and a compromise decree was granted which was not subsequently challenged or modified. Thereafter, the first respondent herein filed a suit before the learned District Munsif, Aranthangi in O.S.No.342 of 1990 for declaration that the compromise decree entered into in O.S.No.22 of 1972 is invalid. The said suit was decreed on 21.12.2000, which was challenged before the appellate Court in A.S.No.120 of 2002. The appellate Court set aside the decree and judgment passed in O.S.No.342 of 1990 by its order dated 31.01.2003. Aggrieved by this, the respondent filed C.M.A.No.2653 of 2020 which was dismissed on 07.12.2022 by this Court holding that the decree and judgment of the appellate Court did not suffer any legal infirmity and a direction was also issued to dispose of the suit expeditiously and the re-trial was commenced in O.S.No.342 of 1990 before the learned District Munsif Aranthangi. In the meantime, the present revision petitioner filed an application under Order 7 Rule 11(d) for dismissing the suit in O.S.No. 342 of 1990 on the ground that the compromise decree could not be set aside or challenged by way of a separate suit in view of the bar under Order 22 Rule



3 (a) of CPC and sought for dismissal of the suit on the ground of limitation also. Since the suit was not filed by the plaintiff within three years after attaining majority, the said application was resisted by the respondents by stating that the guardian of the minor failed to protect the interest of the minor in the earlier suit and therefore, the suit filed by the plaintiff is maintainable. However, the trial Court dismissed the application filed by the revision petitioner. Hence, the above revision is preferred.

7. As per the observation made in the decision cases referred to by the learned counsel appearing for the petitioner, a party to a consent decree based on a compromise, to challenge the compromise decree on the ground that the decree was not lawful, has to approach the same Court which recorded the compromise and a separate suit challenging the consent decree is not maintainable. However, a separate suit for setting aside a decree on the ground of gross-negligence on the part of the next friend of the minor, is maintainable. In the present suit, the plaintiff has averred that the gross-negligence is on the part of his next friend in prosecuting the earlier suit. In the plaint, it is mentioned that the father of the plaintiff without



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following the procedures contemplated under Order 32 Rule 7 of CPC entered into a compromise in the earlier suit in O.S.No.22 of 1972 against the interest of the minor. Therefore, the findings of the trial Court in I.A No.90 of 2022 stating that without obtaining the permission from the Court, he relinquished the property of the minor, is correct. Moreover, the trial Court has rightly found that the suit filed by the plaintiff is within the limitation period since the suit was filed within a period of three years and the same is not barred by limitation. Therefore, no infirmity is found in the order passed by the trial Court that the decree passed in the earlier suit is illegal, since the guardian of the minor has entered into a compromise without the permission of the Court.

8. In view of the above discussions, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.11.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To
The District Munsif,
Aranthangi.



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K.GOVINDARAJAN THILAKAVADI

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order made in
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10.11.2023