



C.R.P.(MD).No.322 of 2014

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 14.08.2023

DELIVERED ON: 04.12.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.322 of 2014

Gandhi Meenal

...Petitioner

Vs

1.Jothi Muthuramalingam

2.Ganeswari

3.Rameswari

Vellaichamy (died)

4.Krishnamoorthy

5.Jothi

6.Saraswathi

7.Sukkira Devi

8.Senthur Pandian

9.Chinnapandian

10.Veluchamy

...Respondents



C.R.P.(MD).No.322 of 2014

WEB COPY

PRAYER: Civil Revision Case is filed under Article 227 of Constitution of India, to set aside the Fair and Decretal Order dated 04.10.2013 passed in I.A.No.192 of 2011 in O.S.No.161 of 1979 on the file of the Subordinate Judge, Paramakudi and allow the present Civil Revision Petition.

For Petitioner : M/s.J.Anandhavalli

For R1 & R4 : Mr.H.Lakshmi Shankar

For R2, R3, R5 to R10 : No appearance

ORDER

The plaintiff in O.S.No.161 of 1979 on the file of the Subordinate Court, Ramnad is the revision petitioner. The revision petition has been filed challenging the dismissal of an application made by the plaintiff under Sections 151 and 152 of C.P.C for amending the memo of compromise entered into between the parties on 20.11.1985.

(A).Facts leading to the filing of this revision are as follows:

2.The revision petition herein as plaintiff had filed O.S.No161 of 1979 on the file of the Subordinate Court, Ramnad at Madurai as against 33 defendants for the following reliefs.



WEB COPY



C.R.P.(MD).No.322 of 2014

(a)declaring the petitioner/plaintiff as pauper;

(b)directing the defendants to deliver possession of the suit properties to the plaintiff free from any obstruction of the defendants, their agents, men and servants and other persons claiming under them;

(c)passing an order for recovery of future mesne profits from the date of suit till the date of delivery of possession of the suit properties;

(d)directing the defendants to pay the plaintiff the cost of this action;

(e)and granting the plaintiff such and further reliefs as this Hon'ble Court deems fit and proper in the circumstances of this case and thus render justice.

3.Pending suit, some of the parties to the suit entered into a compromise and filed I.A.No.515 of 1984 to record the said compromise. The compromise memo was signed by the plaintiff, defendants 15 to 17 and one Indirasenai, Suriyapiragasam and Dhanachandirapragasam. The said compromise memo entered into between the plaintiff and some of the defendants was accepted by the Court and a compromise decree came to be passed on 28.10.1985.

4.Clauses 44 and 50 of the said compromise decree are relevant for the purpose of disposal of this civil revision petition are extracted as



C.R.P.(MD).No.322 of 2014

follows:

WEB COPY

“44.That then Chief Principal Trustee of the Charitable Endowments shall get the entire properties of the Suit Trust registered in the name of “Pasumpon Muthuramalinga Thevar Arakkattalai” in the records pertaining to the Revenue and Local Administration Department;

50.That the plaintiff shall take steps to recover possession of the properties omitted herein, but standing in the name of Thiru.U.Muthuramalinga Thevar in official records and to register them in the name of the suit trust;”.

5.As per compromise memo, the plaintiff is the Chief Principal Trustee of the Charitable Endowments and therefore, she was empowered to mutate the revenue records of the suit trust registered in the name of Pasumpon Muthuramalinga Thevar Arakkattalai. As per Clause 50, the plaintiff has to take steps to recover possession of the properties omitted herein, but standing in the name of Sri Pasumpon Muthuramalinga Thevar in the official records and to register them in the name of the suit trust.

6.Some of the defendants who were not put on notice about the compromise memo, challenged the same before this Court in CRP.Nos. 2742 and 2743 of 1986 and 635 of 1987. This Hon'ble Court in paragraph



No.11 has observed as follows:

WEB COPY

“11.....It is significant to note that none of the parties to the compromise had challenged the same on any of the grounds contemplated under the Contract Act. It is only the third parties to the compromise who are objecting to the execution of the compromise decree. After all the compromise is an agreement between the parties to the same and the Court merely puts its seal on the agreement and passes a decree in terms of such an agreement. In this view of the matter, it is not possible to hold that the compromise is unlawful in view of the fact that the parties have not challenged the decree as such.”

7.This Court was not inclined to set aside the compromise and proceeded to hold in paragraph No.14 as follows:

“14.In the result, it must be held that the compromise cannot be set aside in these proceedings. However, it is made clear that the said compromise decree is not binding on the defendants 19 and 20 in any manner. It was only a decree for bare possession and, therefore, it is always open to these defendants to agitate their rights in separate suit. Similarly, they are also not entitled to transpose as plaintiffs...”

and dismissed C.R.P.Nos.2742, 2743 of 1986 and 606 and 635 of 1987.



C.R.P.(MD).No.322 of 2014

8.Challenging the order passed in E.P.No.11 of 1986 in O.S.No.

161 of 1979, C.R.P.Nos.4081 of 1986 was filed by the fifth defendant. This

Court has observed as follows:

“20.....Therefore, essentially it is a bare scheme decree without providing for any consequential reliefs in so far as defendants 5 and 6 are concerned. Though it is not open to them to challenge the decree in the execution proceedings, it is open to them to do say that the decree as such is not executable against them. This is not on the basis of the decree being a nullity, but on the ground of absence of proper relief. It is no doubt true that in certain cases the Court can always grant reliefs in the absence of a specific provision in the decree in order to give effect to the decree itself. These are cases where a consequential relief automatically follows on the principle relief. So far as the present case is concerned, such a principle cannot be applied. Therefore, the objections taken by defendants 5 and 6 will have to be sustained. It is open to the parties who are entitled to the suit properties, to seek appropriate reliefs separate proceedings, it so advised. Those two civil revision petition will have to be allowed.”

9. With these observations, CRP.No.4081 of 1986 and CRP.No.151 of 1987 filed by the defendants 5 and 6 challenging the order of delivery were allowed. Thereafter, the plaintiff had filed I.A.No.355 of



C.R.P.(MD).No.322 of 2014

1988 for amendment of the compromise decree for including a prayer for delivery of possession as against the defendants 5 and 6. This application was dismissed by the trial Court. Challenging the same, the plaintiff had filed CRP.No.341 of 1989. After referring to the order of this Court in CRP.No.4081 of 1986 and CRP.Nos.151 of 1987, this Court by an order dated 09.02.1996 was pleased to dismiss the said revision petition with the following observation:

“6.....The petitioner now sought for amendment of the decree by inserting a clause for delivery of possession by defendants 5 and 6. Therefore the decree was passed without a clause for delivery of possession. Unless the compromise memo itself is amended, it is not possible to amend the decree by inserting a clause for delivery of possession. In such circumstances, the order passed by the lower Court in refusing to grant the amendment is in order. Accordingly, I am not inclined to interfere with the order passed by the trial Court. However, as permitted in the earlier order in the above said revision petition, it is open to the petitioner/plaintiff to approach Court by appropriate proceedings for the purpose of obtaining delivery of possession from the fifth respondent/fifth defendant, as she may be advised. With the above observation, the revision petition is dismissed.”



C.R.P.(MD).No.322 of 2014

10. Thereafter the plaintiff had filed the present application in I.A.No.192 of 2011 under Sections 151 and 152 of C.P.C seeking to amend the memorandum of compromise and the compromise decree to include the prayer for recovery of possession as against the defendants.

11. The said application was resisted by the legal heirs of defendants 5 and 6 contending that they are not trespassers and they are also having a share in the property. They have further contended that since they are not parties to the compromise memo, the said decree cannot be enforced as against them. They have further contended that the relief of recovery of possession was not granted in the decree and hence, the question of delivery of possession does not arise.

12. The further contention of the respondents was that the omission of the relief of recovery of possession is not accidental. The prayer for amendment of compromise memo is not maintainable without impleading the other parties to the compromise memo.

13. The learned Judge was pleased to observe that without amending the compromise memo, compromise decree cannot be amended. The learned Judge further observed that all the parties to the compromise memo are necessary parties in the petition for amendment of the



C.R.P.(MD).No.322 of 2014

compromise memo and they alone can enlighten the Court about the actual terms of compromise and whether the non-mentioning of the relief of delivery of possession and not giving authorisation to the plaintiff by other parties are accidental or not. Based upon the said findings, the learned Judge dismissed the application after concluding that the terms of the compromise could not be amended in the absence of the persons who were parties to the said compromise. This order is under challenge in the present revision petition.

(B).The contentions of the learned counsel appearing for the petitioner are as follows:

14.As per Clause-50 of the compromise decree, the plaintiff has been given authorisation by other parties for seeking recovery of possession of properties. Therefore, the presence of other parties is not necessary.

15.While dismissing CRP.Nos.2742 and 2743 of 1986 and CRP.Nos.606 and 635 of 1987 liberty was granted to the plaintiff to seek appropriate relief in separate proceedings, if so advised. This liberty was granted in the presence of all the parties to the compromise memo and therefore, the non impleading of other parties to the compromise memo for



C.R.P.(MD).No.322 of 2014

WEB COPY

amending the compromise memo will not be fatal.

16. Defendants 5 and 6 have voluntarily chosen to remain exparte and therefore, they cannot now complain that they are not signatories to the compromise memo. They were aware of the compromise decree and therefore, they are bound to hand over possession to the petitioner.

17. When all the parties to the compromise memo were already parties to the previous proceedings before the High Court, it is not necessary to implead them once again in an application to amend the compromise memo.

18. The learned counsel for the petitioner had further contended that even assuming that the presence of other parties to the compromise memo is required, the Court should have granted an opportunity to the plaintiff/revision petitioner to implead the other parties. Without granting such an opportunity, the trial Court ought not to have dismissed the application on the ground of non-joinder of necessary parties.

19. Any amendment to the compromise memo would only affect the rights of the parties in possession and it will not affect the rights of the parties to a compromise memo. Therefore, the trial Court ought not to have dismissed the application for amendment of compromise memo and decree



C.R.P.(MD).No.322 of 2014

WEB COPY

on the basis of non impleading of parties to the compromise memo

20. Admittedly the defendants 5 and 6 were not parties to the compromise memo and therefore, they have no *locustandi* to question the amendment of the compromise memo.

21. Defendants 5 and 6 being trespassers/ illegal occupants, cannot raise a technical ground to avoid execution of the compromise decree. The parties to the compromise memo alone are having right over the property and the defendants 5 and 6 being trespassers cannot have any right over the amendment of the compromise memo or the compromise decree. Though they were aware of the prayer sought for in the plaint for recovery of possession, defendants 5 and 6 remained *exparte* and therefore, they cannot question the attempt made on the part of the plaintiff to seek delivery of possession by amendment of compromise memo and compromise decree. Hence, she prayed for allowing the revision petition.

(C).Contentions of the learned counsel appearing for the respondents as follows:

22. The ancestor of the respondents herein though were parties to the litigation, they have remained *exparte* and they had not signed the compromise memo. Therefore, the compromise decree which is based



C.R.P.(MD).No.322 of 2014

upon the said compromise memo cannot be enforced as against the respondents.

23.Though there was a prayer in the plaint seeking recovery of possession from the defendants, the same was consciously omitted at the time of entering into compromise between the plaintiff and some of the defendants. Those conscious omissions cannot be rectified by invoking Sections 151 and 152 of C.P.C.

24.A perusal of Clause 50 of the compromise decree clearly indicates that the plaintiff has to take steps to recover possession of the property omitted herein, but standing in the name of Sri.Muthuramalinga Devar. Therefore, no authorisation was granted to the plaintiff to recover possession of the suit schedule properties.

25.Even assuming that the plaintiff has been authorised to recover possession of the suit schedule properties, it cannot be by way of execution of the compromise decree, but only by way of an independent suit. The delivery order passed by the trial Court in E.P.No.11 of 1986 was set aside by this Court in CRP.No.4081 of 1986 and CRP.No.151 of 1987 with an observation that the objections of the defendants will have to be sustained with regard to the binding nature of compromise decree. The



C.R.P.(MD).No.322 of 2014

plaintiff was granted liberty to seek relief only in separate proceedings.

Therefore, the present attempt made on the part of the plaintiff to amend the compromise memo and decree are not maintainable.

26.A compromise memo is a contract between the parties and unless all of them agree, the compromise memo cannot be amended. In the present case, the plaintiff has not even chosen to implead the other parties to the compromise memo and therefore, the trial Court was right in dismissing the said application.

27.The respondents relied upon the judgments of the Hon'ble Supreme Court reported in *(1978) 2 SCC 403 (Surinder Mohan Vikal Vs. Ascharaj Lal Chopra)*, *AIR 1914 Bombay 127 (Lachiram Dagduram Marwadi Vs. Jana Yesu Mang)*, *ILR 2000 KAR 3549(M.K.Purushottam Vs.Smt.Mallamma and others)*, *AIR 1940 Mad 538 (Koha Adinarayana Rao Naidu Vs. Koka Kothandaramayya Naidu and others)* to contend that without consent of all the parties to a compromise memo, neither the memo nor the decree could be amended.

28. I have given anxious consideration to the submissions made on either side and perused the material records.



C.R.P.(MD).No.322 of 2014

29.The issues that arises for consideration in this revision petition are as follows:

(i)Whether the consent of all the parties to a compromise memo/decreed is required for amendment of the same?

(ii)Whether Section 152 of C.P.C can be invoked for amending the compromise decreed for introducing a new prayer namely recovery of possession which was not present in the compromise memo or in the original compromise decreed?

(iii)Whether a compromise decreed is binding upon the parties who have not signed the compromise memo?

(iv)What is the effect of liberty granted to the plaintiff in previous round of litigations?

(D).Consent of the parties for amendment of compromise memo:

30.This Court in a judgment reported in *AIR 1940 Mad 538 (Koha Adinarayana Rao Naidu Vs. Koka Kothandaramayya Naidu and others)* had held that the Court has no jurisdiction under Section 152 of C.P.C to add a term to what is in fact a consent decreed without the consent of both parties. This Court in a judgment reported in 1940 (2) MLJ 311 (Mooriantakath Ammo Vs. Matathankandy Vattakkavyil Pokkan) has held that where a decreed is based on a agreement between the parties, an



C.R.P.(MD).No.322 of 2014

essential term of the agreement embodied in the decree cannot be changed by an act of the Court on the application of one only of the parties, but the consent of both parties to the original agreement would be necessary for its modification.

31.This Court in a judgment reported in **1962 (1) MLJ 418 (Bethanna Nadar Vs. M.Srinivasan and others)** has held that an essential term of an agreement embodied in the decree cannot be changed without the consent of other parties.

32.The Hon'ble Supreme Court in a judgment reported in **(1996) 10 SCC 255 (Suvaran Rajaram Bandekar and others Vs. Narayan R.Bandekar and others)** in paragraph No.3 has held that in a consent decree of compromise, the Court would be loath to interfere with the terms thereof by way of modification unless both parties given consent thereto.

33.The Hon'ble Supreme Court in a judgment reported in **(1996) 11 SCC 678 (Gupta Steel Industries Vs. Jolly Steel Industries Pvt.Ltd., and another)** in paragraph No.6 has held that as a principle of law, the High Court was obviously incorrect in interfering with and modifying the consent decree unless parties agree for the same.



C.R.P.(MD).No.322 of 2014

34.A learned Single Judge of this Court in a judgment reported in **2002 (3) CTC 200 (Padmini Ammal Vs. Indian Bank Rampakkam Branch rep.By its Branch Manager Villupuram and two others)** has held that when a compromise decree based on consent of both the parties is passed, the Court has no power to vary the terms on the basis of the application of one of the parties.

35.In view of catena of judgments of the Hon'ble Supreme Court and this Court, it is clear that the compromise memo or a compromise decree cannot be amended without the consent of all the parties to the said compromise memo. In the present case, admittedly only the petitioner has approached the Court by filing the present application seeking amendment of compromise memo and the compromise decree in order to hand over the property for delivery of possession as against the defendants 5 and 6. Therefore, the trial Court has rightly rejected the said application.

(E)The scope of Section 152 of C.P.C with regard to the amendment of the compromise decree:

36.The Hon'ble Supreme Court in a judgment reported in **(1999) 3 SCC 500 (Dwaraka Das Vs. State of M.P. and another)** in paragraph No.6 has held as follows:



WEB COPY

“6. Section 152 C.P.C. provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the court or the tribunal becomes functus officio and thus being not entitled to vary the terms of the judgments, decrees and orders earlier passed. The correction contemplated are of correcting only accidental omission or mistakes and not all omissions and mistakes which might have been committed by the Court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 for which the proper remedy for the aggrieved party is to file appeal or review application. It implies that the Section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the provisions of Sections 151 and 152 of the CPC even after passing of effective order in the lis pending before them. No Court can under the cover of the aforesaid sections modify, alter or add to the terms of its original judgment, decree or order...”



37.The Hon'ble Supreme Court in a judgment reported in **(2001)**

4 SCC 181 (Jayalakshmi Coelho Vs. Oswald Joseph Coelho) in paragraph Nos.13 and 14 has held as follows:

“13.So far legal position is concerned, there would hardly be any doubt about the proposition that in terms of Section 152 C.P.C., any error occurred in the decree on account of arithmetical or clerical error or accidental slip may be rectified by the court. The principle behind the provision is that no party should suffer due to mistake of the court and whatever is intended by the court while passing the order or decree must be properly reflected therein, otherwise it would only be destructive to the principle of advancing the cause of justice.....

14.As a matter of fact such inherent powers would generally be available to all courts and authorities irrespective of the fact whether the provisions contained under Section 152 C.P.C. may or may not strictly apply to any particular proceeding. In a matter where it is clear that something which the Court intended to do but the same was accidentally slipped or any mistake creeps in due to clerical or arithmetical mistake it would only advance the ends of justice to enable the Court to rectify such mistake. But before exercise of such power the Court must be legally satisfied and arrive at a valid finding that the order or the decree contains or omits something which was intended to be otherwise, that is to say, while passing the decree



C.R.P.(MD).No.322 of 2014

WEB COPY

the court must have in its mind that the order or the decree should be passed in a particular manner but that intention is not translated into the decree or order due to clerical, arithmetical error or accidental slip. The facts and circumstances may provide clue to the fact as to what was intended by the court but unintentionally the same does not find mention in the order or the judgment or something which was not intended to be there stands added to it. The power of rectification of clerical, arithmetical errors or accidental slip does not empower the court to have a second thought over the matter and to find that a better order or decree could or should be passed.. There should not be re-consideration of merits of the matter to come to a conclusion that it would have been better and in the fitness of things to have passed an order as sought to be passed on rectification. On a second thought the court may find that it may have committed a mistake in passing an order in certain terms but every such mistake does not permit its rectification in exercise of Court's inherent powers as contained under Section 152 C.P.C. It is to be confined to something initially intended but left out or added against such intention.

38.The Hon'ble Supreme Court in a judgment reported in (2022)

5 SCC 449 (Ajanta LLP Vs. Casio Keisanki Kabushiki Kaisha D/B/A



C.R.P.(MD).No.322 of 2014

Casio Computer Company Limited and another) in paragraph Nos.22

and 24 has held as follows:

“22.A consent decree would not serve as an estoppel, where the compromise was vitiated by fraud, misrepresentation, or mistake. The Court in exercise of its inherent power may rectify the consent decree to ensure that it is free from clerical or arithmetical errors so as to bring it in conformity with the terms of the compromise. Undoubtedly, the Court can entertain an Application under Section 151 of the CPC for alterations/ modification of the consent decree if the same is vitiated by fraud, misrepresentation, or misunderstanding.

“24.....There is no allegation either of fraud or misrepresentation on the part of the Respondent. We are unable to agree with the Appellant that there was a mistake committed while entering into a settlement agreement due to misunderstanding. Correspondence between the advocates for the parties who are experts in law would show that there is no ambiguity or lack of clarity giving rise to any misunderstanding. Even assuming there is a mistake, a consent decree cannot be modified/ altered unless the mistake is a patent or obvious mistake. Or else, there is a danger of every consent decree being sought to be altered on the ground of mistake/ misunderstanding by a party to the consent decree.”



C.R.P.(MD).No.322 of 2014

WEB COPY

39.A careful perusal of the judgments of the Hon'ble Supreme Court clearly indicates that only the corrections which are arithmetical or clerical in nature and happen due to accidental slip, can be rectified by the Court. The above power of rectification does not empower the Court to have a second thought over the matter or reconsideration of merits. Section 152 of C.P.C can be invoked only in cases where it is clear that the Court had intended to do, but it had accidentally slipped or any mistake had crept in, but in all cases where there is a conscious omission, the same cannot be modified invoking Section 152 of C.P.C. However, the Court has got power to entertain the application for amendment of consent decree under Section 151 of C.P.C. if the same is vitiated by fraud, misrepresentation or misunderstanding. Even in such cases, the consent decree cannot be modified unless the said mistake is patent or obvious mistake.

40.In the light of the proposition of law, let us consider the facts of the present case.

(i)In the plaint a specific prayer was sought for recovery of possession from the defendants. However, while entering into a compromise, the said prayer has been replaced with Clause 50 of the



C.R.P.(MD).No.322 of 2014

WEB COPY

compromise decree which states that the plaintiff shall take steps to recover possession of the property omitted herein, but standing in the name of Sri.Muthuramalinga Devar in the official records and to recover them in the name of suit trust. Therefore, it is clear that the plaintiff was granted authorisation to recovery possession of the properties that were not part of the suit schedule, but not authorised to seek delivery of possession of the properties included in the suit schedule. Now by filing I.A.No.192 of 2011, the plaintiff seeks to amend Clause-13 of the compromise memo and decree authorising the plaintiff to seek recovery of possession by filing execution proceedings against all the defendants. This amendment can never be considered to be an arithmetic or clerical error or accidental slip which had happened at the time of drafting compromise memo.

(ii) Though the prayer for delivery of possession was prayed for in the plaint, it has been consciously omitted at the time of drafting of the compromise memo. In fact, Clause-50 of the compromise memo clearly indicates that the plaintiff has been authorised to initiate regular proceedings only as against the properties that were not included in the suit schedule. Therefore, the amendment sought for does not fall within the



C.R.P.(MD).No.322 of 2014

scope of Sections 151 and 152 of C.P.C in the light of the judgments cited supra.

41.Binding nature of compromise decree on the non-parties to a compromise memo:

(i)The Hon'ble Supreme Court in a judgment reported in **(1994) 1 SCC 531 (Ruby Sales and Services (P) Ltd., and another Vs. State of Maharashtra and others)** in paragraph No.15 has held as follows:

“15.....Merely because an agreement is put in the shape of a consent decree it does not change the contents of the document. It remains an agreement and it is subject to all rights and liabilities which any agreement may suffer. Having a stamp of court affixed will not change the nature of the document. A compromise decree does not stand on a higher footing than the agreement which preceded it. A consent decree is a mere creature of the agreement on which it is founded and is liable to be set aside on any of the grounds which will invalidate the agreement.”

42.The Hon'ble Supreme Court in a judgment reported in **(2006) 5 SCC 566 (Pushpa Devi Bhagat Vs. Rajinder Singh and others)** in paragraph No.17 has held as follows:



“17.....

(i)....

(ii)...

(iii)...

(iv)...*This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made.....”*

43.The Hon'ble Supreme Court in a judgment reported in **(2009) 6 SCC 194 (Sneh Gupta Vs. Devi Sarup and others)** in paragraph No.24 has held as follows:

“24.Order XXIII, Rule 3 of the Code of Civil Procedure provides that a compromise decree is not binding on such defendants who are not parties thereto.....”

44.In view of the judgments of the Hon'ble Supreme Court, it is clear that a consent decree is nothing, but a contract between the parties over which seal of approval is granted by the Court. Therefore, it does not stand on a better footing than an agreement which preceded it. Since it is construed to be an agreement between the parties, the non-parties would



C.R.P.(MD).No.322 of 2014

not be bound by the said agreement. In the present case, the plaintiff and some of the defendants have entered into a compromise which is sought to be executed by the plaintiff as against the defendants 5 and 6 who are not signatories to the said compromise memo.

45.It is the contention of the learned counsel for the revision petitioner that the defendants 5 and 6 having remained exparte in the suit in which there was a prayer for recovery of possession, cannot now contend that the compromise decree is not binding upon them. The said contention would be acceptable only if a decree for recovery of possession has been passed after contest between the contesting parties, though the defendants 5 and 6 have remained exparte.

46.In the present case, though defendants 5 and 6 have remained exparte, the plaintiff had chosen to enter into a compromise with other defendants with regard to framing of a scheme in a trust. Therefore, the said contention is not legally sustainable.

(F) Effect of liberty granted in the previous round of litigation:

47.While allowing CRP.No.4081 of 1986 and CRP.No.151 of 1987, this Court has given a specific finding that the defendants 5 and 6



C.R.P.(MD).No.322 of 2014

are entitled to contend that the decree is not executable as against them, in view of the fact that they are not parties to the compromise memo. This Court was pleased to set aside the order of delivery passed by the trial Court and granted liberty to the parties to seek appropriate relief in separate proceedings, if they are so advised.

48.In CRP.No.341 of 1989, while confirming the dismissal of an application for amendment of compromise decree, this Court has observed that it is open to the petitioner/plaintiff to approach the Court by appropriate proceedings for the purpose of obtaining delivery of possession from the fifth defendant, as she may be advised.

49.This Court has categorically held that the decree is not binding upon defendants 5 and 6 who were not signatories to the compromise memo and hence, liberty was granted only to initiate appropriate separate proceedings. Therefore, the petitioner cannot again seek to amend the compromise memo to incorporate the relief of delivery of possession in the present suit itself. Therefore, viewed from any angle, liberty granted by this Court could never be construed to permit the plaintiff to seek relief in the same suit by amendment of compromise memo, especially when there is a finding that the compromise memo is not



C.R.P.(MD).No.322 of 2014

binding upon the defendants 5 and 6.

WEB COPY

(G).Conclusion:

50. In view of the above said discussions, this Court is of the considered opinion that the trial Court has rightly dismissed the application seeking amendment of compromise memo on the ground that the consent of other parties to the compromise memo has not been obtained. That apart, the omission which is sought to be rectified by way of amendment application is not a mere error of arithmetic or clerical, but substantial relief is sought to be introduced which is clearly against the scope of Section 152 of C.P.C. However, the revision petitioner is always at liberty to file an independent suit to establish her right and seek delivery of possession of the property. If any such suit is filed, the parties are at liberty to raise all the issues being uninfluenced by the order of this Court.

51. With the above said observation, this Civil Revision Petition is dismissed. No costs.

04.12.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa



C.R.P.(MD).No.322 of 2014

To

1. The Subordinate Judge, Paramakudi
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P.(MD).No.322 of 2014

R.VIJAYAKUMAR, J

msa

Pre-delivery order made in
C.R.P.(MD).No.322 of 2014

04.12.2023