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C.R.P(MD)No.2356 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.09.2023

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**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.2356 of 2023

1.K.Hariharan
2.Moorthy

... Petitioners/Defendants 1&2/
Respondents 1&2

Vs.

1.Nagarajan
2.Sivakumar

...1st Respondent/Plaintiff/
Petitioner
...2nd Respondent/1st Defendant/
3rd Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the Lok Adalat award passed in O.S.No.311 of 2021 on the file of the 3rd Additional District Court, Tirunelveli, dated 24.02.2022 by the National Lok Adalat, Tirunelveli in LAS No.239 of 2022 and pass order to rectify the name of the second petitioner as Soma Sundara Moorthy.

For Petitioners :Mr.H.Arumugam
For Respondents :Mr.S.Manickam

ORDER

The Civil Revision Petition is filed challenging the award passed in O.S.No.311 of 2021 on the file of the 3rd Additional District Court,



Tirunelveli, dated 24.02.2022 by the National Lok Adalat, Tirunelveli in LAS No.239 of 2022 and to rectify the name of the second petitioner as Soma Sundara Moorthy.

2. According to the revision petitioners, the first respondent filed a suit in O.S.No.311 of 2022 before the District Court, Tirunelveli, for partition and separate possession of his $\frac{1}{2}$ share over the suit properties against the petitioner and the second defendant. The said suit was referred to the Lok Adalat, wherein, the issue was amicably settled between the parties and an award was passed on 28.04.2022, based on the joint compromise memo. It is further submitted that when the award was presented for registration before the Sub-Registrar Office, Tirunelveli Town, the Sub-Registrar found that the name of the 2nd petitioner is mentioned as K.Soma Sundara Moorthy in all identity cards, but in the award, his name appears as Moorthy. Therefore, the petitioners were advised to rectify the award. When the petitioners submitted their request before the Presiding Officer of the Lok Adalat along with identity cards, he informed that once the award was passed, the office is *functus officio* and he cannot do anything. Therefore, the petitioners filed a petition before the District Court, which is a referral Court, wherein their request was not considered. Hence, the present civil revision petition is filed.



3. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents and perused the materials available on record.

4. The learned counsel appearing for the petitioners submitted that any modification in the Lok Adalat award can be done only by invoking the powers under Article 227 of the Constitution of India, as held by the Hon'ble Supreme Court in the case of ***Bhargavi Constructions and another-Vs-Kothakapu Muthyam Reddy and others***, reported in ***2018(13)SCC 480***. Therefore, in view of the mistake committed in mentioning the name of the second petitioner/2nd defendant in the plaint, despite the settlement of issue between the parties by compromise, the parties are not in a position to enjoy the fruits of the decree. The learned counsel further submitted that since the above mistake is rectified, no prejudice would be caused to the other side. If a fraud is committed in the award of the Lok Adalat, the litigant is entitled to invoke the provisions under Article 227 of the Constitution of India. However, in the present case, it is only to rectify the mistake in the name of the second petitioner/second defendant by submitting the application before the Lok Adalat. To support his contention, the learned counsel relied upon the decision of the Hon'ble Supreme Court, in the case of ***Dhanraj Dnyaneshwar Koche-Vs-Rajiv***



Ramdattaji Batra and another, reported in **2019(4)Mh.L.J**, wherein it is held that:

“In Bhavan Vaja and others-Vs-Solanki Hanuji Khodaji Mansang and another, reported in AIR 1972 SC 1371, the Hon'ble Supreme Court has observed that it is the duty of the Executing Court to find out the true effect of a decree is passed though it cannot go behind such decree in the execution proceedings. For construing a decree, the Executing Court can take into consideration the pleadings as well as the proceedings leading up to the decree. That is the plain duty of the Executing Court. In State of Punjab-Vs-Darshan Singh, reported in 2004(2) Mh.L.J.(S.C)565, it has been observed that the corrections contemplated under Section 152 of the Code are only accidental omissions or mistake. A clerical mistake is a mistake in writing or typing and the same can be duly corrected in exercise of that power. As noted above in the present case the compromise memo has been correctly prepared and it is only the award which contains as erroneous reproduction of Clause 2 of the compromise memo. The mistake is therefore accidental as well as clerical in nature. The observations in Tulashiram Nivaruthi Shendge case, that even in the matters of the present type, the Executing Court can exercise powers under Section 152 of the Code of correcting an award support the case of the respondent No.1.”

5.Thus, from the aforesaid legal position, it appears that there was a clerical mistake in mentioning the name of the second petitioner/second



defendant at the time of passing the Lok adalat award. In the said decision, the Hon'ble Apex Court has held that the Executing Court can exercise the power under 152 of C.P.C., for correcting an award. In the present case, the referral Court has returned the application by stating that it is not a clerical mistake and hence, the said application cannot be entertained.

6. In view of the above, it is not a fit case to exercise the power under Article 227 of the Constitution of India. Hence, this Civil Revision Petition is dismissed. However, the petitioners are directed to file an appropriate application before the III Additional District Court, Tirunelveli. On filing such application, the III Additional District Judge, Tirunelveli, is directed to number the petition, if it is otherwise in order and dispose the same on merits and in accordance with law, within a period of two weeks therefrom. No costs.

25.09.2023

NCC: Yes/No
Index: Yes/No
Internet: Yes/No
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To

- 1.The Principal District Judge,
Kanyakumari District,
Nagercoil.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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K.GOVINDARAJAN THILAKAVADI, J.

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