



CMP.No.3601 of 2023

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in
CRP.No.4141 of 2015

S.SOUNTHAR, J.

The petitioners filed this petition seeking to recall the order dated 26.04.2016 passed in CRP.No.4141 of 2015 recording the compromise dated 26.04.2016 entered between the respondents 1, 2 & 7.

2. The respondents 1 & 2 filed a suit in OS.No.9562 of 2019 on the file of the VII Additional City Civil Court, Chennai, seeking relief for partition. The respondents 1 & 2 sought the relief on the ground that they are the Class 2 heirs of the said Govindan. In the plaint averment, it was stated by the respondents 1 & 2 that the suit properties belonged to their maternal uncle Govindan and they were entitled to share in the suit property in their capacity as Class-2 heirs of the said Govindan. It was also averred by the respondents 1 & 2 that the seventh respondent/seventh defendant in the suit Vijayalakshmi was only a maid of Govindan and she had no status of legally wedded wife of Govindan.



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3. In the suit, a preliminary issue was framed with regard to the legal status of the said Vijayalakshmi. The said preliminary issue was decided in favour of the seventh respondent by holding that Vijayalakshmi is legally wedded wife of Govindan. Aggrieved by the decision in the preliminary issue, the respondents 1 & 2/plaintiffs filed a revision in CRP.No.4141 of 2015 and the said Civil Revision Petition was disposed of by recording the compromise between the respondents 1 & 2 and the seventh respondent. The said order is sought to be recalled in this petition. As per terms of compromise memo, the seventh respondent had given up her rights in item 2 of the suit property. Both the parties agreed that item No.1 of the suit property shall be retained by the seventh respondent. Recording the said compromise, this Court dismissed the suit in respect of item No.1 and allowed all the parties to the suit to agitate the right in respect of item No.2 in the suit.

4. The learned counsel for the petitioners submitted that the compromise was entered into only between the respondents 1, 2 & 7. No



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notice was served on the first petitioner herein in the Civil Revision Petition and though notice was served on the second petitioner and he was represented by a counsel, the second petitioner did not sign the compromise memo. Therefore, the compromise memo entered into between the respondents 1, 2 & 7 do not bind the petitioners. This Court ought not to have recorded the compromise when it is not signed by the petitioners.

5. It is also brought to the notice of this Court that the petitioners herein in their written statement filed in the main suit denied the title of Govindan in respect of item No.2 of the suit property. A reading of written statement filed by the petitioners in the main suit would suggest that he also admitted the status of the seventh respondent as wife of Govindan. When the petitioners admitted the title of Govindan in respect of item No.1 of the suit property and status of Vijayalakshmi as wife of Govindan certainly they will not be aggrieved by the dismissal of the suit in respect of item No.1.



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6. It is settled law, when the Class-1 heirs are alive Class-2 legal heirs are not entitled to claim the property. Therefore, the petitioners are not at all aggrieved by the order passed in Civil Revision Petition or dismissal of the suit in respect of item No.1 by recording compromise entered into between the respondents 1, 2 & 7. Therefore, I do not find any reason to recall the said order. However, it is open to the petitioners and the other respondents who are not parties to the compromise memo to raise their claim and contest the suit in respect of item No.2 of the suit property.

7. With these observation, this Civil Miscellaneous Petition stands dismissed.

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