



WEB COPY



C.R.P.No.981 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P. No.981 of 2024

and

CMP.No.5033 of 2024

1.G.Ramasamy

2.Kalaiselvi

3.Minor Sarveshram

Rep. by next friend Mother and

Natural Guardian Kalaiselvi ... Petitioners

-Versus-

P.Krishnan

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No..35 of 2024 on the file of the Principal District Judge, Dharmapuri.

For Petitioner : *Mr.N.Manoharan*

For Respondent : *Mr.D.Shivakumaran*

ORDER

This civil revision petition is at the instance of the defendants in O.S.No.35 of 2024 on the file of the learned Principal District Judge at



C.R.P.No.981 of 2024

Dharmapuri.

WEB COPY

2. O.S.No.35 of 2024 is a suit filed by the respondent

- (a) for declaration of title;
- (b) for declaration that the partition deed executed inter se between the defendants on 14.07.2023 in document No.2588 of 2023 is null and void and not binding on the plaintiff;
- (c) for permanent injunction restraining the defendants from alienating the suit schedule mentioned property in favour of any third party; and
- (d) for consequential reliefs.

3. For the sake of convenience, the parties shall be referred to as per their ranks in the suit.

4. O.S.No.35 of 2024 is a second round of litigation between the parties. Originally the plaintiff had presented O.S.No.220 of 1995 on the file of the learned Subordinate Court at Dharmapuri seeking partition of joint family properties into two equal halves and for allotment of the shares in his favour. The defendant in that suit is the father of the first defendant in the present suit namely, one P.Govindan @ Govinda Gounder. Govinda Gounder presented another suit for partition in O.S.No.67 of 1996. The subject matter of the latter



C.R.P.No.981 of 2024

suit and the subject matter of the present suit is a Cinema Theatre by name “Sri Palaniyappa Theatre” and the land appurtenant. Due to enhancement of pecuniary jurisdiction, both the suits came to be transferred to the file of the Principal District Judge at Dharmapuri and renumbered as O.S.No.101 of 2004 and O.S.No.103 of 2004 respectively.

5. The cases were bound over by the learned Principal District Judge to the file of the Additional District Court at Dharmapuri. After recording evidence in both suits, the learned Additional District Judge decreed both the suits as prayed for on 11.10.2004.

6. Aggrieved by the same, two appeals were preferred before this Court in A.S.No.109 of 2005 by Govinda Gounder and A.S.No.957 of 2005 by the present plaintiff.

7. Pending the appeals, on account of mediation that had been carried on between the parties, a compromise was arrived at between them. Both appeals came to be disposed of by a compromise decree passed by a Division Bench of this Court on 23.12.2005. In terms of the compromise, there were three schedule – 'A', 'B' & 'C'. A schedule mentioned properties fell to the share of



C.R.P.No.981 of 2024

Govinda Gounder and the defendants herein and B schedule mentioned properties fell to the share of plaintiff and his family members. There is no dispute with respect to these two schedules.

8. The Cinema Theater, the subject matter of this suit was denominated as C schedule to the compromise deed. The plaintiff agreed to receive a sum of Rs.15,00,000/- from the first defendant and the predecessor-in-interest of defendants 2 and 3 to give up his rights over the property. The compromise also records that during the lifetime of the first defendant and his brother, the property will be enjoyed by their father, Govinda Gounder. The compromise also recorded that out of Rs.15,00,000/-, a sum of Rs.4,00,000/- had been paid by the first defendant and his brother leaving a balance of Rs.11,00,000/- to be paid on or before 28.02.2006 to the plaintiff.

9. It is the case of the plaintiff that a sum of Rs.11,00,000/- had not been paid and since final decree was not passed in terms of clause 9 of the compromise decree, he became the owner of the property. He would plead that the defendants *inter se* entered into a partition deed on 14.07.2023, by which they divided the properties, which is the subject matter of the suit. He would state that this document was not registered by the Sub Registrar and therefore,



C.R.P.No.981 of 2024

the first defendant had presented a writ petition in W.P.No.6644 of 2023 and had obtained an order for registration and it was only thereafter, the partition deed was registered.

10. The plaintiff would plead that on coming to know about this document, he lodged a police complaint on 10.03.2023 which was countered by the first defendant by lodging another complaint on 25.03.2023. Since he is the owner of the property and feared that his possession is being interfered with by the defendants along with their henchmen, he came-forth with the suit for the aforesaid reliefs.

11. On service of summons, the defendants have filed this revision. According to the defendants, the balance sum of Rs.11,00,000/-, that was to be paid pursuant to clause 4 of the compromise decree, had been paid on 27.02.2006 to the plaintiff. They also received an acknowledgement from the plaintiff to that effect. They would state that the first defendant and his brother had taken possession of the property and it was being managed by Govinda Gounder as long as he was alive. They would plead that both Govinda Gounder as well as the husband of the second defendant and the father of the third defendant, namely, Panneerselvam passed away intestate. Consequently, the



C.R.P.No.981 of 2024

property devolved on them which they partitioned by way of document dated

08.02.2023.

12. The defendants would point out that Ganesamoorthi, one of the sons of the present plaintiff filed a suit against his father/plaintiff herein and his brother Sundharamoorthy for partition of the present suit schedule mentioned property in O.S.No.20 of 2023 on the file of the Principal District Judge at Dharmapuri. Immediately on coming to know about that their property was sought to be partitioned, the defendants moved an application to implead themselves in the said suit. This application in I.A.No.3 of 2023 in O.S.No.20 of 2023 came to be allowed on 17.08.2023. Instead of carrying out the amendment and proceeding further with the suit, this O.S.No.20 of 2023 was withdrawn on 21.11.2023. Soon thereafter, the present suit for declaration of title seems to have been filed.

13. The defendants would state that the dispute between the parties had been settled by way of the compromise decree dated 23.12.2005 to which the plaintiff is a party and after a lapse of nearly 19 years, the present suit has been filed for declaration of title without challenging the compromise decree. They would plead that by virtue of the compromise decree, the properties have



C.R.P.No.981 of 2024

already been conveyed to them and therefore, this suit is abuse of process of law and deserves to be struck off.

14. The defendants would further add that since it is an abuse, the parties need not resort to an application under Order VII Rule 11 of the Code of Civil Procedure and they can approach this Court in the exercise of powers vested in it under Article 227 of the Constitution of India seeking the reliefs as they have sought for.

15. This revision was entertained by this Court and notice was taken by Mr.D.Sivakumaran.

16. I have heard Mr.N.Manoharan for the civil revision petitioners and Mr.D.Sivakumaran for the respondent.

17. Mr.N.Manoharan would contend that the suit is an abuse of process of law and therefore, the revision is maintainable. He would plead that the plaintiff is trying to re-agitate the issue which has been settled by the compromise decree and hence, should not be encouraged by this Court. He would add that even without seeking a declaration the compromise deed is bad,



C.R.P.No.981 of 2024

the plaintiff has brought forth this suit.

WEB COPY

18. Per contra, Mr.D.Sivakumaran would submit that the receipt that had been produced in the typed set of papers is a forged and fabricated one. He would state that the plaintiff has accepted the compromise deed, but not the alleged payments said to have been made by the first defendant and his brother on 27.02.2006. He would state that whether the said amount was paid or not cannot be a subject matter of revision as it requires factual findings and therefore, he would plead that the parties would have to be relegated for a detailed trial. He would state that in case the parties are sent for trial, the plaintiff will be in a position to prove that the receipt dated 27.02.2006 is a forgery and that he is entitled to the suit schedule mentioned property by virtue of the purchase made by him on 30.07.1979.

19. I have carefully considered the arguments on both sides.

20. At the outset, I would have to decide on the maintainability of this revision. This issue arises because of a view that had been taken by my learned brother Mr.Justice D.Bharatha Chakravarthy in N.Periyasamy vs. Mohamed Balaldeen in CRP(MD) No.671 of 2022 dated 23.08.2024. He had taken a view



C.R.P.No.981 of 2024

that by virtue of the judgment in ***Virudhunagar Hindu Nadargal Dharma***

Paribalana Sabai and others Vs. Tuticorin Educational Society and Others,

(2019) 9 SCC 538 and ***Surya Dev Rai Vs. Ram Chander Rai and Others,***

(2003) 6 SCC 675, while the power to nip a vexatious plaint at the bud is available to the court, it should not be exercised unless contesting the proceedings itself would be injustice to the parties or on the basis of urgency involved in the proceedings.

21. A perusal of this judgment shows that my brother had not taken a view that the civil revision petition itself is not maintainable. He had only stated that while exercising the power to nip the proceedings in the bud, this Court must also see whether there is any urgency or whether relegating the parties to contest the matter before the trial court would itself be amount to injustice.

22. It is here that I shall usefully refer to the judgment of this Court in ***T.P.Kathiresan vs. R.Ramadas, 2020 (2) MWN (Civil) 768***. The Hon'ble Mr.Justice R.Subramanian had held that directing the party to avail an alternate or efficacious remedy available under the Code of Civil procedure is a self-imposed restriction by the Court. He would hold that a party cannot take advantage of such self-imposed restrictions to defeat just claims or to sustain



C.R.P.No.981 of 2024

wholly obnoxious abuse of process of law. He would point out that the Court cannot close its eyes and drive the parties to a regular remedy under Order VII Rule 11 of the Code, when the dereliction on part of the court below in entertaining the suit, is brought to the notice of the High Court.

23. Hence, a reading of both the aforesaid judgments would lead me to a conclusion that a revision under Article 227 is maintainable to strike off the plaint when there is an abuse of process of court, and the Court would be failing in its duty in case it does not exercise its power when the continuation of the proceedings before the Trial Court would amount to injustice or when it is an abuse of process of law.

24. Now turning to the facts of the case, I would agree with Mr.D.Sivakumaran that this Court cannot render a finding whether the alleged receipt issued by the plaintiff to the first defendant and his brother on 27.02.2006 is valid and genuine. In order to reach that conclusion, it requires some evidence to be recorded and this Court would normally not record evidence in a revision under Article 227. Therefore, I have to proceed as if the payment had not been made and still see whether the suit should remain on the file of the Court.



C.R.P.No.981 of 2024

WEB COPY

25. The undisputed facts are that the brothers, Krishnan and Govinda Gounder and their other family members entered into a compromise deed on 23.12.2005. The parties to the compromise deed are

- (i) Govinda Gounder, son of Palanivel Gounder,
- (ii) Mr.Ramasamy (1st defendant herein),
- (iii) Paneerselvam (ii and iii are sons of Govinda Gounder),
- (iv) Krishnan, son of Palanivel Gounder,
- (v) Kamalam, wife of Krishnan,
- (vi) Ganesamoorthi, and
- (vii) Sundaramoorthy (vi and vii are the sons of Krishnan).

The aforesaid persons constituted a Hindu Joint Family and had acquired several properties. On account of the fact that Govindan Gounder and his brother could not co-exist in that status, the suits came to be filed in the years 1995 and 1996.

26. On account of enhancement of pecuniary jurisdiction of the Civil Courts, the said suits stood transferred to the file of the Additional District Judge at Dharmapuri and were renumbered as O.S.No.101 of 2004 and O.S.No.103 of 2004. The suits were decreed on 11.10.2004. Against the said



decrees, two appeals were preferred to this Court by Govinda Gounder and Krishnan in A.S.No.109 of 2005 and A.S.No.957 of 2005 respectively. Pending the litigation, the parties compromised the same.

27. I am now concerned only with the property denominated as 'C' schedule in the compromise decree. I am extracting the relevant clauses of the compromise decree for the purpose of easy appreciation:

“3. In respect of C schedule properties even though there is a decree by which half of the same has been given to Govinda Goundar and the remaining half share to Krishnan, due to the understanding and agreement between the parties, due to the advise of common friends and people, that to compromise the entire right of Krishnan, Ramasamy and Pannerselvam shall have to pay Krishnan a sum of Rs.15,00,000/- (Rupees fifteen lakhs only) jointly and that Krishnan shall relinquish all his rights in the C schedule properties in favour of Ramasamy and Pannerselvam.

4) Ramasamy and Pannerselvam have initially paid the sum of Rs.4,00,000/- (Rupees four lakhs) out of Rs.15,00,000/- on 21.11.2005 and the balance of Rs.11,00,000/- (Rupees eleven lakhs) shall be paid by them within three months from 21.11.2005 before the 28.02.2006 to Krishnan and obtain the necessary documents and take possession of the C schedule property.



5) *Sri Palaniyappa Cinema Theatre which is the C Schedule Property even though the full right is favour of Ramasamy and Pannerselvam, that Ramasamy and Pannerselvam shall hand over possession in favour of Govinda Goundar and he shall enjoy the said property till his death with out encumbering the same and thereafter that after the death of Govinda Goundar, the said C Schedule Property shall go to Ramasamy and Pannerselvam and they can get absolute right over the same.*

6) *The said Ganesamurthy has no objection to set aside the decree made in the suit filed by him in O.S.No.672 of 1995 before the District Munsif Court, Karur, that he shall also undertakes that he shall not claim an right over suit property therein in the future.*

7) *The said Kamalam has no objection to set aside the decree made in O.S.No.673/95 before the District Munsif Court, Karur, that she shall also undertakes that she shall not claim any right over the same in the future.*

8) *That Govinda Goundar, Ramasamy, Pannerselvam, Krishnan, Kamalam, Ganesamurthy and Sundaramurthy shall withdraw all the Civil, Criminal and appeal cases filed by them and that as per the above compromise they file necessary petition in the concerned courts and obtain the final orders in terms of the compromise made in supra.*

9) *That all the parties concerned shall cooperate with*



WEB COPY



C.R.P.No.981 of 2024

each other for mutations of the individual names in the revenue records and other records in terms of this compromise as mentioned supra.”

28. A perusal of these clauses shows that the plaintiff had given up his right over the C schedule mentioned property in favour of the first defendant and his brother on receipt of Rs.15,00,000/-. Clause 4 of the compromise decree records that the plaintiff herein had received a sum of Rs.4,00,000/- leaving a balance of Rs.11,00,000/- to be paid on or before 28.02.2006. Taking the averment in the plaint to be true, it is the plea of the plaintiff that since the amount of Rs.11,00,000/- had not been received and as no final decree was passed, he became the owner of the property.

29. Clause 3 of the compromise decree makes it very clear that on receipt of Rs.15,00,000/-, the plaintiff shall relinquish all his rights in the C schedule property. Clause 5 records that the full right is in favour of the first defendant and his brother Pannerselvam. Pursuant to the said compromise decree, the defendants claim that they have become the owners of the suit schedule mentioned properties and therefore entered into the partition deed. On reading the compromise decree, I am able to see several insurmountable obstacles in the path taken by the plaintiff.



C.R.P.No.981 of 2024

WEB COPY

30. Even if I were to assume that the sum of Rs.11,00,000/- had not been paid by Ramasamy and Pannerselvam to Krishnan, there is no default clause in the compromise decree stating that the title vests with the plaintiff. This is because by virtue of the judgment and decree of the Courts in O.S.No.101 and 103 of 2004 dated 11.10.2004, all that Krishnan could have enjoyed is a decree for 1/2 share in C schedule mentioned property. It is nowhere stated in the plaint how this 1/2 share would bloom into an absolute share in favour of the plaintiff for him to present a suit for declaration of title. Therefore, in order to claim an absolute right over the property, it is the duty of the plaintiff to seek for cancellation of the compromise decree as well as setting aside the preliminary decree that had been passed by the learned Additional District Judge on 11.10.2004. Unless and until these reliefs of cancellation and setting aside are sought for, the plaintiff cannot succeed in a suit.

31. At this juncture, I have to note that a suit for setting aside of a compromise decree is not maintainable. This is by virtue of Order XXIII Rule 3-A of the Code of Civil Procedure. A reading of the plaint shows that the plaintiff is not disputing the compromise. I am able to see why the plaintiff accepts the compromise. He has taken the benefit of the compromise by getting



C.R.P.No.981 of 2024

the title to the B schedule property. Further the plaint also agrees that in terms of the compromise, the plaintiff had received a sum of Rs.4,00,000/- from the first defendant and his brother Pannerselvam. At best, the plaintiff can have a claim over the alleged non payment of Rs.11,00,000/-. Hence, I conclude that the claim of the plaintiff for declaration of title is absolutely without any basis.

32. It is here that I can usefully refer to the judgment of the Supreme Court in ***Pushpa Devi Bhagat v. Rajinder Singh, (2006) 5 SCC 566***. In paragraph 17 of the said judgment, the Supreme Court had held that in case a party wants to avoid a consent decree, then the remedy to that party is to approach the very Court which recorded the compromise and establish that there is no such compromise. Such a course of action had not been adopted by the plaintiff in the present case.

33. The compromise that had been arrived at was before this Court and I failed to appreciate how the plaintiff could have approached the District Court with a suit which is the subject matter of this revision. Even if the amount is not paid, the remedy of a party as pointed out in the aforesaid judgment is to move for execution of that portion of the decree, which is capable of being executed. In addition, by accepting Rs.4,00,000/- out of Rs.15,00,000/-, the plaintiff had acted upon the compromise arrived at for 'C' schedule property

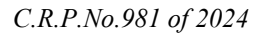


C.R.P.No.981 of 2024

WEB COPY

34. The plaintiff is entitled to monies by virtue of the compromise deed and in case the said amount was not paid, the plaintiff could have always filed an execution petition seeking attachment and sale of the properties of the first defendant and his brother Pannerselvam for the amounts that remained unpaid under the compromise decree. He also had an option to approach this Court stating that since the first defendant and his brother had not kept up that part of the compromise, the compromise requires to be recalled and nullified. None of these procedures as contemplated by law had been followed by the plaintiff. Instead, he has been emboldened to move the District Court seeking a declaration of his title with respect to the properties covered under the compromise. This is an indirect attempt to set aside the compromise as well as the decree of partition against which the regular appeals were preferred to this Court. Such an attempt is *ex facie* an abuse of process of court.

35. Furthermore, a careful analysis of the compromise would show that it was a composite compromise decree bringing an end to all the litigations that was existed in the family. In ***Hari Shankar Singhania and others v. Gaur Hari Singhania and other, (2006) 4 SCC 658***, the Supreme Court had laid down the manner in which the family arrangement or settlement should be interpreted by



36. My reading of the compromise recorded by this Court on 23.12.2005, especially clauses 6 to 8, would show that by virtue of the said compromise, all civil, criminal and other proceedings which were pending at that time were to be settled. If the District Judge is permitted to re-open the same, I feel it would be contrary to the verdict of the Supreme Court laid down above.

37. The compromise decree is a composite compromise decree putting an end to all the disputes that arose between the parties. If the plaintiff were to be permitted to re-agitate the issues, which had been settled by way of compromise, it amounts to mocking the very compromise that found approval at the hands of a Division Bench of this Court. I am not willing to accept that Courts subordinate to this Court possess the jurisdiction to question the



C.R.P.No.981 of 2024

implementation of the compromise recorded by this Court. In fact, the compromise decree entered into between the parties operates as an estoppel as laid down by the Supreme Court in ***Compack Enterprises India (P) Ltd. v. Beant Singh, (2021) 4 CTC 119.***

38. Insofar as the plea of Mr.D.Shivakumaran that no final decree had been passed in terms of Clause 9 and hence, the compromise must be treated only as a preliminary and not as an executable final decree is concerned, I am not agreeable with the said submission. A court at the stage of preliminary decree does not pass an executable decree. All that it does is declare the shares of the parties, leaving it open for the parties to approach the Court for passing of a final decree or for the Court to suo motu initiate final decree proceedings. This is because, it is only the final decree which is an executable decree. The compromise decree, as seen in the present case, operates as a final decree in itself.

39. I have already noted that the compromise decree is a composite one, which had put an end to all the litigations between the parties. Therefore, the compromise decree passed on 23.12.2005 is in effect of a final decree. This is because, it not only declared the shares of the respective parties but also dealt with the allotment of the said shares, which is normally the duty of the Court at



C.R.P.No.981 of 2024

the time of passing the final decree.

WEB COPY

40. As per clause 1, the property covered under A schedule went to Govinda Gounder and the members of his branch and B schedule property went to the plaintiff and his branch members. C schedule property fell to the share of the first defendant and his brother Pannerselvam. Therefore, the compromise is in effect a preliminary and final decree rolled into one and it does not require a separate final decree to be passed for the purpose of converting it into an executable decree.

41. My reading of clause 9 does not show that it contemplated a final decree to be filed. The purpose of clause 9 is to enable the parties to update the revenue records in line with the compromise decree.

42. In the light of the above discussion, if the suit were to continue on the file of the learned District Judge, it would be granting premium to the plaintiff to re-agitate the issue that he had lost as early as 2004 before the Additional District Judge and concluded by the compromise before this Court in the year 2005. Hence, it is an abuse of process of Court and deserves to be struck off.

See, ***K.K. Modi v. K.N. Modi, (1998) 3 SCC 573.***



C.R.P.No.981 of 2024

WEB COPY

43. The suit in O.S.No.35 of 2024 shall be struck off the file of the learned Principal District Judge at Dharmapuri. The learned Principal District Judge is requested to record that the suit has been struck off and pass consequential orders for the purpose of consigning the suit to his records. Having come to this conclusion, I cannot leave the plaintiff remediless.

44. The plaintiff pleads that under clause 4, he is entitled to Rs.11,00,000/-, the balance after having received Rs.4,00,000/- from the first defendant and his brother Pannerselvam. As pointed by the Supreme Court, the appropriate remedy in case the amounts had not been paid is to approach the Division Bench of this Court and seek for appropriate directions. At this stage, the plaintiff can always urge that the receipt that has been produced by the first defendant and his brother is fabricated and forged one.

45. As seen from the records, the plaintiff and his sons attempted to partition the property, which is the subject matter of the compromise previously and after having withdrawn the same, filed this suit for declaration of title. They have never attempted to approach this Court, which they are entitled to under law, but wanted to litigate, indirectly, the correctness of that compromise



C.R.P.No.981 of 2024

decree passed by this Court before the learned District Judge. Hence a cost of Rs.25,000/- is imposed on the plaintiff for having abused the process of the court.

46. Granting liberty to the plaintiff to take appropriate measures as is open to him under law, **the civil revision petition stands allowed.** Consequently, the connected miscellaneous petition is closed.

12.09.2024

nl

Index : Yes/No
Speaking Order/Non-speaking order
Neutral Citation : Yes/No

To

1.The Principal District Judge, Dharmapuri.



WEB COPY



C.R.P.No.981 of 2024

V.LAKSHMINARAYANAN, J.
nl

C.R.P.(NPD).No.981 of 2024

12.09.2024