



CMP.No.7003 of 2022  
in SA.No.993 of 2010

WEB COPY **V. SIVAGNANAM, J.**

CMP.No.7003 is filed to grant leave to reopen the second appeal.

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

3. The learned counsel for the petitioners submitted that the petitioners are the daughters of one Velupillai/1<sup>st</sup> defendant in OS.No.131 of 2001 on the file of the Subordinate Judge, Tiruvannamalai. The plaintiff/second respondent herein filed the suit for partition of the plaint schedule properties claiming 1/4<sup>th</sup> share against the defendants. In the said suit the petitioners were not added as legal heirs.

4. After trial, the trial Court decreed the suit by judgment and decree dated 30.09.2005. Against which, appeal in AS.No.40 of 2006 was filed on the file of the District Judge, Tiruvannamalai. The said appeal was



dismissed on 29.01.2010 by confirming the judgment and decree of the trial Court. Aggrieved against the same, the second appeal in SA.No.993 of 2010 has been filed before this Court.

5. During the pendency of the second appeal, the parties in the second appeal have filed a compromise memo dated 25.02.2020, based on the said memo, the second appeal is disposed of, the contents of the said compromise memo is reproduced hereunder :-

“a)The first respondent is entitled for 1/4th share in the suit property as granted by the decree and judgment dated 30.09.2005 in O.S.No.131/2001 on the file of the Principle Sub Judge, Tiruvannamalai confirmed by the decree and judgement dated 29.01.201 in A.S.No.40/2006 on the file of Principle District Judge, Tiruvannamalai.

b)The appellant herein is entitled to 1/4th share which is allotted to him by the Courts below mentioned supra. The appellant is also entitled for another 1/4th share allotted to his father Velupillai by virtue of the registered will dated 20.01.2007. Thus the appellant is entitled for 2/4th share or  $\frac{1}{2}$



share in the suit property.

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c)The second respondent is entitled for 1/4th share in the suit property and the appellant will continue to act as his natural guardian and would take utmost care and caution in safeguard in interest of second respondent share.”

6. The petitioners are not party to the compromise memo, the parties to the suit and the second appeal took away the shares of the petitioners herein without informing them and without adding them as the parties to the suit proceedings by playing fraud and compromised the matter. Besides introducing the alleged Will dated 20.01.2007 executed by their father, without proving the Will and in pursuance of the Will, the second defendant/respondent herein got one share fraudulently therefore seeking to set aside the compromise decree dated 25.02.2020 passed by this Court.

7. The learned counsel for the respondent admitted the relationship between the parties and the petitioners are legal heirs of the deceased Velupillai/first defendant and also admitted the petitioners are not added as party to the entire suit proceedings.



8. It is seen that the petitioners are the daughters of one Velupillai/1<sup>st</sup> defendant in OS.No.131 of 2001 on the file of the Subordinate Judge, Tiruvannamalai. The plaintiff/second respondent herein filed the suit for partition of the plaint schedule properties claiming 1/4<sup>th</sup> share against the defendants. In the said suit the petitioners were not added as parties to the suit proceedings.

9. Admittedly, the petitioners are also the legal heirs of Velupillai/first defendant in the suit in OS.No.131 of 2001. It is not disputed that the petitioners are legal heirs of Velupillai. Though the petitioners are not added as parties on the ground that they are not having share over the suit plaint schedule properties. The petitioners being the legal heirs of the Velupillai/first defendant, the petitioners ought to have been added as legal heirs to the suit proceedings pertaining to the properties belonging to deceased Velupillai, without adding the petitioners as parties, filed the present suit for partition. Admittedly, the petitioners are the legal heirs of Velupillai was left out in the partition suit, through out the proceedings, the petitioners were not added as a parties in the partition suit, without adding them in the compromise memo also, a compromise decree



has been effected.

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10. The contention of the petitioners is that not adding them as legal heirs to the partition suit cannot be termed as a fraud, if the parties/petitioners have any share over the properties, they can file separate suit for partition over the properties in which they are having rights. Therefore, the ground stated by the petitioner to set aside the compromise memo is unsustainable. Any how, if the petitioners have any right over the plaint schedule properties to claim share, they can file separate suit for partition of the properties belonging to Velupillai. This compromise decree dated 25.02.2000 is not a bar for filing partition suit by the petitioners to claim their respective shares.

11. In view of the above, this petition is dismissed with liberty to the petitioners to file a separate suit for partition to workout their remedy, if any in the properties belonging to their father deceased Velupillai/first defendant in the suit in OS.No.131 of 2001.

**27.06.2024.**

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