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C.R.P.No.308 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.308 of 2024

K.Lakshmi @ Lakshmi Ammal

... Petitioner

Vs.

Gnanaselvi

... Respondent

PRAYER: Civil Revision Petition has been filed under Article 227 of Constitution of India, 1950, praying to set aside the docket order dated 05.07.2023 in unnumbered I.A.SR.No.4080 of 2023 in O.S.No.18 of 2023 on the file of Subordinate Judge at Uthangarai, Krishnagiri District and direct the Court to record the joint compromise memo filed by the petitioner/defendant and respondent/plaintiff.

For Petitioner : Ms.G.Revathi

For Respondent : Ms.S.Sofia Madhan

ORDER

The petitioner/defendant in O.S.No.18 of 2023 has filed this revision seeking to set aside the docket order dated 05.07.2023 in unnumbered I.A.SR.No.4080 of 2023 in O.S.No.18 of 2023 on the file of



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Subordinate Judge at Uthangarai, Krishnagiri District and for a consequential direction to the Court to record the joint compromise memo filed by the petitioner/defendant and respondent/plaintiff.

2.The contention of the petitioner is that the respondent filed a suit against the petitioner for specific performance seeking a decree to conclude the agreement dated 03.09.2022 and for a direction to the petitioner/defendant to execute the sale deed in favour of the respondent/plaintiff. Even before summons could be completed, the respondent was negotiating with the petitioner to resolve the issue between them, and later issue got resolved, compromise arrived between the petitioner and respondent. The trial Court on 02.03.2023 recorded the same and adjourned the case to 23.03.2023 for reporting settlement. On 23.03.2023, the petitioner was called absent and thereafter the case was adjourned to 21.04.2023. Thereafter, periodically the case was adjourned and on 05.06.2023, it is recorded that the settlement was not reported and written statement not filed. Hence, the petitioner/defendant



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set ex-parte and the case was posted to 05.07.2023 for recording respondent/plaintiff's side ex-parte evidence. On 05.07.2023, the petitioner and the respondent present. The petitioner and the respondent filed a Joint Compromise Memo signed by petitioner, respondent and their respective counsels informing the Court that the petitioner agreed to transfer the ownership and possession of the suit schedule property in favour of the respondent and also agreed to surrender all documents, chitta, patta, adangal, etc., within a period of one month. She also admitted the receipt of sale consideration of Rs.5,00,000/- from the respondent. This petition was returned for the reason that ex-parte order not set aside, hence, memo is not maintainable.

3.The learned counsel for petitioner submitted that along with compromise deed, a petition was filed under Order IX Rule 7 of C.P.C. seeking to set aside the ex-parte order dated 05.06.2023 and the same was also returned with an endorsement that written statement to be filed. He



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further submitted that though the petitioner informed filing of Joint Compromise Memo and set aside petition, the trial Court returned petition finding it to be defective, which is not proper.

4.The learned counsel further submitted that it is clear from the provisions contemplated under Order XXIII Rule 3 that the Court shall record compromise and pass a decree in accordance therewith. He further submitted that the provision does not contemplate by whom compromise petition to be filed. It only states that when the claim is satisfied to that effect of the plaint and the parties concerned file joint compromise memo, the Court shall record the same and pass judgment and decree to that effect. But the Lower Court without application of judicial mind returned this petition. Hence, the order passed by the Lower Court is liable to be set aside.

5.The learned counsel appearing for the respondent/plaintiff confirms the compromise and the issue resolved between the petitioner and



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the respondent. Further he submitted that the objections raised by the Lower Court is not sustainable and was in agreement with the submissions of the petitioner.

6.Considering the submissions made and on perusal of the materials, it is seen that the respondent/plaintiff filed a suit seeking a decree for specific performance of the agreement to sell dated 03.09.2022 and further direction that the petitioner/defendant to execute the sale deed and get the same registered in favour of the respondent/plaintiff. During pendency of the suit, a compromise arrived between the petitioner and respondent, the petitioner agreed to transfer the ownership and possession of the suit schedule property to the respondent, which is the relief sought in the suit. She also admit receipt of sale consideration of Rs.5,00,000/-. The Joint Compromise Memo filed by the petitioner and respondent produced before the Lower Court on 05.07.2023 along with a petition under Order IX Rule 7 of C.P.C. to set aside the ex-parte order dated 05.06.2023 and to record the compromise



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entered between the petitioner and respondent. The petitioner is a senior citizen aged about 98 years and for that reason she was not able to appear on the previous hearing on 05.06.2023 when she was set ex-parte. The trial Court returning the compromise memo, and the ex-parte set aside petition for the reason the written statement not filed, is not proper. Even as per Section 89 of C.P.C., the settlement of disputes outside the Court is to be recognised and encouraged. In this case, the issue settled, compromise arrived, Joint Compromise Memo filed signed by both petitioner and respondent. Further as per Order XXIII Rule 3 of C.P.C., when there is a compromise in writing and signed by the parties, the Court shall record the compromise and shall pass a decree in accordance therewith. The Hon'ble Apex Court in the case of ***Moti Lal Banker vs. Mahraj Hasan Khan*** reported in ***AIR 1968 SC 1087***, held that after institution of a suit, it is open to parties to compromise. Nowhere it is stated that only after filing of written statement, the ex-parte decree can be set aside. In this case, the petition to set aside the ex-parte decree filed referring to the compromise entered. In view of the same, the trial Court



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ought to have set aside the ex-parte order, received the compromise, recorded the same and passed orders accordingly.

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7.In view of the same, the Docket Order dated 05.07.2023, passed in I.A.SR.No.4080 of 2023 is hereby set aside. The trial Court is directed to number the I.A.SR.No.4080 of 2023 in O.S.No.18 of 2023, set aside the ex-parte order, receive the Joint Compromise Memo, record the same and pass orders accordingly.

8.With the above directions, this Civil Revision Petition is allowed.

No costs.

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Index : Yes/No

Internet : Yes/No

Speaking order/Non speaking order

Neutral Citation : Yes/No

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Note: Issue order copy on 10.06.2024



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M.NIRMAL KUMAR, J.

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To
The Subordinate Judge
Uthangarai, Krishnagiri District.

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