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C.R.P.No.5052 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2024

CORAM

THE HONOURABLE MR.JUSTICE **V. LAKSHMINARAYANAN**

C.R.P.No.5052 of 2024
and
C.M.P.No.28338 of 2024

1.M.Subramani
2.Palani
3.Chinnadurai
4.Annamalai

.. Petitioners

VS

Dhanalakshmi

.. Respondent

Petition filed under Article 227 of the Constitution of India to set aside the decreetal order dated 31.07.2024 in I.A.No.826 of 2023 in O.S.No.141 of 2023 on the file of Sub Judge at Gingee, Villupuram District.

For Petitioners : Mr.A.J.Mohamed Kassim

ORDER

This civil revision petition challenges the order of learned Subordinate Judge at Gingee in I.A.No.826 of 2023 in O.S.No.141 of 2023 dated 31.07.2024.



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2. The civil revision petitioners are the defendants in the suit.

O.S.No.141 of 2023 has been presented challenging the compromise decree that was passed in O.S.No.124 of 2015 on the file of the learned Subordinate Judge at Gingee.

3. It is the case of the plaintiff that the alleged oral partition between the family members as pleaded by the defendants is a false one. According to the plaintiff, without impleading the plaintiff, who is the daughter-in-law of the first defendant, the parties had compromised the suit in O.S.No.124 of 2015. In the said suit, the defendants *inter se* acting against the rights of the plaintiff had compromised the matter. Hence, she came forth with the suit.

4. On being served with the summons, the defendants entered appearance and filed an application for rejection of plaint. According to them, the property originally belonged to one Munusamy Gounder, who had two sons, namely Arumuga Gounder and Krishna Gounder. After the death of Munusamy Gounder, his two sons partitioned the properties and Arumuga Gounder obtained the properties stated in suit schedule A to G. According to them, there is no dispute between the legal heirs of Krishna Gounder and



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themselves. Therefore, they entered into a verbal/oral partition.

Pursuant to the oral partition, each of them had obtained properties listed out in the aforesaid schedules. They pleaded that as the matter has already been compromised in terms of the decree passed in O.S. No.124 of 2015, the suit is barred by virtue of order XXIII Rule 3A of The Code of Civil Procedure. Hence they filed an application for rejection of plaint.

5. The plaintiff filed a counter stating that she was not a party to the compromise decree and therefore the decree is not binding on her. In addition, she pleaded that whether the partition had taken place between the brothers or whether the property continued to be unpartitioned are all matters which had to be gone into only at the time of trial.

6. Learned Trial Judge was impressed with the arguments of the plaintiff and dismissed the petition. Hence, this revision.

7. I heard Mr.A.J.Mohamed Kassim for the civil revision petitioners.



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8. Mr.A.J.Mohamed Kassim invites my attention to order

XXIII Rule 3A of Code of Civil Procedure and states that the Code of Civil Procedure bars the presentation of a suit challenging a compromise decree. He adds that since the plaintiff has conceded that the suit in O.S.No.124 of 2015 was ended in a compromise decree, the remedy for the plaintiff is only to take appropriate steps pursuant to the same and not present a fresh suit challenging the decree.

9. I have carefully gone through the papers and I have analysed the submissions of Mr.A.J.Mohamed Kassim.

10. Order XXIII Rule 3A of C.P.C. holds that no suit can be presented challenging a compromise on the ground that the decree is unlawful. That is not the plea of the plaintiff in the present case. The plaintiff pleads that the defendants have deprived her of her share in the suit property. The defendants have *inter se* entered into deed of compromise and obtained a decree in O.S. No.124 of 2015 on the file of the learned Subordinate Judge at Gingee. When a compromise is recorded by a Court, the Court endorses the compromise that is entered into between the parties holding that it is a lawful agreement. Once the Court has concluded that it is



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lawful, then, a suit will not lie to reopen the same by citing a suit to declare it to be unlawful. This is the purpose of Order XXIII Rule 3A C.P.C. In other words, Order XXIII Rule 3A C.P.C. does not bar a party from presenting the suit to challenge a compromise decree, when he or she, is not a party to the said document or the decree.

11. In the light of the above discussion, leaving it open to the defendants to make all challenges to get the suit defeated, I am not inclined to admit the revision. Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.12.2024

Index:Yes/No
Neutral Citation:Yes/No
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To

The Subordinate Judge,
Gingee, Villupuram.



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