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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

A.S.No.690 of 2018
and
C.M.P.No.19113 of 2018

1.Sivaji

2.Kanyakumari

...Appellants

Vs.

1.Chockammal

2.Dhanalakshmi

3.Kanchana D.Sokka

4.Shunmughavelu D.Sokka

5.Thanikaivelu D.Sokka

6.Kumaravelu D.Sokka

(Respondents 3 to 6 are represented by their
Power of Attorney Dr.P.Sudhakar)

7.Dhanalakshmi

8.Yasodha

9.Dilip Kumar

10.Balaji

11.Ramani

12.Rajendran

13.Karpagam

14.V.V.Azees

15.V.V.Ahammed Kutty

16.P.Kunhahammed

...Respondents



Prayer: First Appeal filed under Section 96 of C.P.C., r/w. Order 41 Rule 1 of C.P.C., against the decree and judgment dated 21.03.2018 made in O.S.No.13174 of 2010 on the file of the XIX-Additional Judge, City Civil Court, Chennai.

For Appellants : Mr.R.Vijayakumar

For Respondents : Mr.N.Manikandan for

Mr.S.Natana Rajan for R10

R1 to R12 - Served - No appearance

R13 to R16 - Dismissed vide Order Court
dated 10.02.2023

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The 5th defendant is on appeal, aggrieved by a decree for partition of the plaintiffs' 1/2 share in the suit property and a declaration that the 4th defendant is the absolute owner of the remaining 1/2 share made in O.S.No.13174 of 2010. Since the controversy in the appeal is very limited, we proceed to state the brief facts that are necessary for determination of the controversy.



2.The admitted facts are as follows:-

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The property in question belonged to one Nayagammal who had purchased the same under a sale deed dated 11.05.1932. The said Nayagammal had executed a registered settlement deed in favour of her two daughters, Kokilambal and Sivabhusanammal on 22.08.1940, reserving a right of residence in herself. One of the daughters, Kokilambal predeceased her mother, leaving the plaintiffs 1 and 2, her daughters and her son, namely, Doraivelu. The 1/2 share that belonged to Kokilambal thus, devolved on the plaintiffs 1 and 2 and her deceased son, Doraivelu. Nayagammal died on 27.12.1989 and on her death, the property devolved on her daughters, Sivabhusanammal and the plaintiffs in the suit as per the document of settlement deed dated 22.08.1940. Sivabhusanammal died on 13.04.1994, leaving behind her son, Deivaprasad, who also died on 13.12.2006, leaving behind the defendants 1 to 8, his widow, daughter and sons as his legal representatives. Therefore, according to the plaintiffs, while the plaintiffs 1 and 2 are entitled to 1/3 share each in the 1/2 share of Kokilambal, the plaintiffs 3 to 6 are entitled to the remaining 1/3 share of 1/2 share of Kokilambal. As far as the defendants are concerned, the



plaintiffs would plead that the defendants 1 to 8 being the legal representatives of Sivabhusanammal as the widow and children of Deivaprasad, her son who died on 13.12.2006 would be entitled to remaining 1/2 share.

3.The suit was resisted by the 4th defendant contending that Sivabhusanammal even during her life time had executed a settlement deed settling her 1/2 share in his favour and therefore, he would be entitled to the entirety of the 1/2 share of Sivabhusanammal. In view of the settlement document dated 19.11.1979 executed by her. He would also point out that his father, Deivaprasad @ Veerabadran, while alive, filed a suit in C.S.No.55 of 1996 questioning the said settlement deed and succeeded in the said suit. However, on appeal by the 4th defendant in OSA.No.36 of 2001, a compromise was entered into whereby, Deivaprasad, the only son of Sivabhusanammal conceded title of the 4th defendant to the property under the settlement document. The said compromise was recorded by this Court and a decree was passed based on the said compromise on 01.02.2006, in and by which, the suit in C.S.No.55 of 1996 was dismissed.



4.The 5th defendant in the present suit who is one of the sons of Deivaprasad however, contended that the settlement arrived at between Deivaprasad and the 4th defendant is not binding on him and he would submit that the compromise itself is not valid. From the facts narrated above, it could be seen that there was no dispute regarding the share of the plaintiffs. The only dispute that loomed large before the Trial Court was as to whether the settlement reached between Deivaprasad and the 4th defendant in O.S.A.No.36 of 2001 would be binding on the other heirs of Deivaprasad including the 5th defendant. It is also seen that the appellant / 5th defendant had transferred his share in the suit property i.e., 1/8 of 1/2 which according to him, belonged to Deivaprasad. Hence his wife who was impleaded as 12th defendant in the suit.

5.The Trial Court, upon consideration of the evidence that was placed on record concluded that Deivaprasad, being the only heir of Sivabhusanammal had chosen to question the settlement deed. Though he succeeded in the Trial Court during the pendency of the appeal in O.S.A.No.36 of 2001, he had entered into a settlement with his son, the 4th



defendant and had given up his claim over the property in favour of the 4th defendant. Recording the said compromise, the appeal was disposed of by this Court, dismissing the suit in C.S.No.55 of 1996. The learned Trial Judge found that the wisdom of Deivaprasad in entering into a compromise cannot be questioned by the 5th defendant, that too, in a subsequent proceeding. Deivaprasad, who was admittedly, the only heir of Sivabhusanammal, who would have otherwise got absolute title to the property, has chosen to admit the title of the 4th defendant and entered into a compromise with him paving way for dismissal of the suit filed by him seeking declaration that the settlement deed dated 19.11.1979 executed by Sivabhusanammal in favour of the 4th defendant is invalid.

6.Once that decree goes, the 4th defendant gets absolute title to the share of Sivabhusanammal in the property and it was not open to the other defendants to question the said settlement or the decree passed in O.S.A.No.36 of 2001. On the said finding, the learned Trial Judge granted a preliminary decree declaring the 1/2 share of the plaintiffs and also declaring that the 4th defendant would be entitled to the remaining 1/2 share. It is this decree, which is under challenge at the instance of the 5th



defendant in the suit, one of the sons of Deivaprasad and his wife / settlee under him who figures as 12th defendant.

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7.We have heard Mr.R.Vijayakumar, learned counsel for the appellants and Mr.N.Manikandan, learned counsel for the 10th respondent / 4th defendant in the suit. The other parties though served are not appearing through counsel or in person. The appeal has been dismissed against respondents 13 to 16, who are the tenants.

8.Mr.R.Vijayakumar, learned counsel for the appellants would vehemently contend that the compromise entered into by Deivaprasad in O.S.A.No.36 of 2001 is not binding on the appellants. He would also point out that the reasons for compromise have not been set out and such compromise is not valid. Apart from the above, there are no grounds of challenge to the judgment of the Trial Court. We have heard the contentions of the learned counsel for the appellants.

9.We find those contentions cannot be accepted. Once a compromise decree is entered into between the parties to a proceeding, it binds on their



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successors. Order 23, Rule 3-A provides that no suit shall lie to set aside a compromise decree on the ground that the decree is not lawful. This, in our opinion, is equally applicable to a defense projected in a suit. Here, the 5th defendant wants to invalidate the compromise on the ground that it is not lawful. The said plea is not available to the 5th defendant who claims a share in the property only as a heir, Deivaprasad, who was a party to the compromise.

10. We do not think, we can allow the 5th defendant to challenge the compromise and he is bound by the compromise entered into by his father. We therefore, find no merit in the appeal. This appeal fails and it is accordingly, **dismissed**. We direct the parties to bear their own costs. Consequently, connected miscellaneous petition is closed.

(R.S.M., J.) (R.S.V., J.)
16.04.2024

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Internet: Yes

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Speaking

Neutral Citation : No

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To:-

The XIX-Additional Judge,
City Civil Court,
Chennai.

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