



CMP(MD). No.6724 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Thursday, the Twenty Eighth day of March Two Thousand and Twenty Four
PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CMP(MD). No.6724 of 2023
IN
SA(MD) No.764 of 2011

1.Periya Ramasamy

2.P.Vanjiappan ... Petitioners/2nd &3rd Respondents

Vs

1 K.Vanjiyappan ...1st Respondent/ Appellant

2 A.Vanjammal ...2nd Respondent/1st Respondent

3 K.Ponnusamy (Died) ... /4th Respondent

Prayer in CMP(MD) No.6724 of 2023:-

This Civil Miscellaneous petition is filed under order 41 Rule 21 of C.P.C.,to recall the judgment and decree passed by this Hon`ble Court in S.A.(MD).No.764 of 2011 dated 26-04-2019 and dismiss the same with cost.

Prayer in SA(MD) No.764 of 2011:-

This Second Appeal is filed under section 100 of C.P.C.,against the judgment and decree in AS No.59 of 2009 dated 22.12.2010 on the file of the Sub Court, Palani, Dindigul, confirming the judgment and decree in OS No.31 of 2008 dated 14.09.2009 on the file of the District Munsif Court, Oddanchatram, Dindigul.



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ORDER:-

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This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.C.Ezhilarasu, Advocate for the Petitioner and of Mr.Lenin Kumar For 1st Respondent and Mr.D.Venkatesh For the 2nd Respondent, this Court made the following order:

“This Civil Miscellaneous Petition is filed to recall the judgment and decree passed in S.A.(MD) No.764 of 2011 dated 26.04.2019 and dismiss the same with cost.

2. The petitioners have stated reasons in the accompanying affidavit filed along with the Second Appeal are follows:

The petitioners are respondents 2 and 3 in the Second Appeal. The second respondent filed a suit in O.S.No.31 of 2008 on the file of the District Munsif Court, Oddanchatam against the first respondent and petitioners for declaration, permanent injunction and for directing the defendants therein to restore the public pathway extent of 5 feet width and 80 feet length marked as ABC in the plaint plan and to restore the destroyed



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pipeline laid in the said pathway. The petitioners were arrayed as defendants 1 and 2. The suit was partly decreed on 14.09.2009. The suit was dismissed as against 3rd schedule which belonged to petitioners. The first respondent preferred the appeal in A.S.No.59 of 2009 before the Sub Court, Palani. The petitioners remained ex-parte in the first appeal. The first appeal was dismissed on 22.12.2010. Aggrieved by the same, the first respondent preferred the Second Appeal before this Court. This Court has referred the Second Appeal to mediation centre for amicable settlement wherein a joint compromise memo, dated 15.04.2019 with certain terms was prepared and accordingly decree was passed. As per 1st terms, S.Nos.11/2A and 11/2D belong to the 1st petitioner, S.No.22/3C belongs to the 1st petitioner's wife and S.No.11/2H belongs to the second petitioner. The above survey numbers are not mentioned in the trial Court decree. The trial Court decreed only to restore the pathway extent of 5 feet width and 80 feet length. But, it was agreed by the parties that a land allotted for pathway with a



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length of 30 meters from southern edge and a width of 12 feet from south to north in S.No.22/3C belongs to the wife of the first petitioner. The respondents 1 and 2 cheated this Court and without the knowledge of first petitioner's wife entered in the joint compromise memo for pathway 30 meters length and 12 feet width instead of pathway extent of 5 feet width and 80 feet length. Hence, this petition is filed to recall the judgment and decree, dated 26.04.2019 passed in this Second Appeal.

3. The 1st respondent filed counter and objected the petition and stated as follows:

The first respondent admitted that the second respondent filed the suit in O.S.No.31 of 2008 on the file of the District Munsif Court, Oddanchatram and it was partly decreed and the same was confirmed by the First Appellate Court in A.S.No.59 of 2009 preferred by the first respondent. This respondent preferred this Second Appeal and he compromised with the second respondent in the Second Appeal. The allegations vented out by the petitioners in the affidavit are strongly denied. The second respondent already saved her rights over



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the pathway with a width of 15 feet that is running through S.Nos.11/2A, 11/2D, 11/2H and 22/3C by virtue of decree in O.S.No.12 of 2007. The second respondent owns free access over the pathway in O.S.No.31 of 2008 in the properties in S.Nos.11/2A, 11/2D and 11/2H. The compromise reached between the respondents 1 and 2 in respect of pathway and cart track where the second respondent had access and not over the entire extent of property as averred by the petitioners. The petitioner concealed their involvement in O.S.No.27 of 2020 on the file of the District Munsif Court, Oddanchatram, which was rejected and struck down as all the issues were discussed in O.S.Nos.31 of 2008, 12 of 2007 and 159 of 2012. Thereafter, the petitioners have filed this vexatious petition, which is not maintainable. Hence, the petition is liable to be dismissed.

4. The second respondent filed counter and objected the petition and stated as follows:

The petitioners did not appear before the First Appellate Court as well as before this Court despite summons served on them. The dispute in respect of S.Nos.11/2A, 11/2D, 11/2H



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and 22/3C is the right of the second respondent to use the common pathway with a width of 15 feet. The petitioner already filed the suit in O.S.No.12 of 2007 against the second respondent and others regarding S.Nos.11/2A and 11/2H and the same was dismissed. In that suit, the petitioners admitted about the existence of cart track running through not only in S.Nos.11/2A and 11/2D but also through the other survey numbers. The second respondent claimed right for usage of cart track against the petitioners and the same was decreed by the Court of law. The petitioners have not preferred any appeal and the decree became final. The petitioners filed this vexatious petition to stall the Patta proceeding initiated by this respondent. The petitioners were duly served notice of this appeal and they did not appear before this Court. The petition has no merits and the same has to be dismissed.

5. Heard both sides and perused the records in this Civil Miscellaneous Petition.

6. The learned counsel for the petitioners has submitted that the second respondent filed the suit in O.S.No.31 of 2008 against



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the petitioners and the first respondent, as the suit was dismissed in respect of property of the petitioners, the petitioner did not prefer any appeal. The aggrieved, first respondent preferred first appeal, which was dismissed and so, he preferred the Second Appeal. The respondents 1 and 2 entered into compromise without the knowledge of the petitioners and also they added S.Nos.11/2A, 11/2D and 22/3C which are belonged to the petitioners. Therefore, the petitioners wanted to recall the judgment and decree passed in terms of compromise and there is no limitation for this purpose.

7. The learned counsel for the first respondent contended that the petitioners are parties to this Second Appeal and the petitioners remained ex-parte and the respondents 1 and 2 entered into compromise and after hearing both sides this Court passed the order. If the petitioners find any error he has to file review petition and there is no provisions for recall of the order already passed by this Court that in the year 2019. The petitioners have filed this petition under Order 41 Rule 21. As per the said provision, the petitioners can file the petition for



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rehearing as they remained ex-parte. Being such case, the petitioners have to convince the Court with reason either of the two conditions (1) satisfies the court that the notice was not duly served or (b) he was prevented by sufficient cause from appearing when the appeal was called on for hearing. In this case, the petitioners were duly served notice, but they remained ex-parte. Therefore, the petition is not maintainable.

8. The learned counsel for the second respondent vehemently contended that the second respondent is struggling with her case from the year 2000. The dispute is only with regard to a pathway with breadth of 15 feet. Already the second respondent filed a suit in O.S.No.31 of 2008 in respect of her right over the pathway and the same was decreed, the second respondent is enjoying the pathway as per decree. Moreover, the petitioners filed the suit in O.S.No.12 of 2007 against the second respondent and others, the said suit was dismissed. The petitioners have not preferred any appeal and also the petitioners admitted the cart track running through the



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S.Nos.11/2A and 11/2D but also through the other survey numbers. The petitioners are well known about the compromise decree passed in the Second Appeal and they stated about the compromise decree of the Second Appeal in a petition in I.A.No.113 of 2020 in O.S.No.27 of 2020. This petition is not maintainable and in case the petitioners seeks relief, they can only file review, for that also limitation is over. Therefore, the petition has no merits and the same may be dismissed.

9. Records perused. There is no dispute that the second respondent filed a suit in O.S.No.31 of 2008 before the District Munsif Court, Oddanchatram against the petitioners and the first respondent. The suit was partly decreed. The first respondent preferred the first appeal in A.S.No.59 of 2009 and the appeal was dismissed, then the first respondent preferred this Second Appeal. It is stated by the respondents that the petitioners were duly served notice of first appeal and also the second appeal, but the petitioners remained ex-parte. The respondents entered into compromise in the Second Appeal



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and in terms of compromise, the Second Appeal was ordered.

It is the main contention of the petitioners that without their knowledge compromise decree was passed in this Second Appeal in respect of their lands in S.Nos.11/2A, 11/2D and 22/3C and 11/2H. It is vehemently contended by the second respondent that in earlier suit, the second respondent obtained decree in respect of pathway running through those survey numbers and also the petitioners admitted the right of the second respondent over cart tract in a suit in O.S.No.12 of 2007 filed by the petitioners. The petitioners have not placed any contra material against this contention. Admittedly, there were earlier suits in O.S.Nos.31 of 2008, 12 of 2007, 159 of 2012, 160 of 2008 and 27 of 2020 between the parties. There is no dispute raised by the petitioners. The respondents vehemently contended that the petitioners are well known about the compromise decree passed in this Second Appeal. The respondents filed various case proceedings in the above cases. Particularly, the second respondent alleged that the petitioners filed a suit in O.S.No.27 of 2020 on the file of the District Munsif



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Court, Oddanchatram and in that suit the respondents filed the petitions in I.A.Nos.111 of 2020 and 113 of 2020, wherein the first petitioner, who is respondent therein, clearly admitted about the compromise decree passed in this Second Appeal. The respondents have produced the copy of order dated 16.02.2023 passed in I.A.No.113 of 2020 in O.S.No.27 of 2020 on the file of the District Munsif Court, Oddanchatram. The first petitioner herein is the respondent therein in I.A.No.113 of 2020 in O.S.No.27 of 2020, who filed counter stating as

“**S.A.(MD)No.764/2011**-ல் அசல் வழக்கின் பிரதிவாதிகள் சமரச மனு தாக்கல் செய்து நீதிமன்றத்தை தவறாக வழி நடத்தி கடந்த 26.04.2019-ஆம் தேதி மோசடியாக உத்தரவை பெற்றுள்ளார்கள்..... ”.

So, as per his averments the petitioners knew very well about the compromise reached by the respondents in this Second Appeal in S.A.(MD) No.764 of 2011. Therefore, the contention of the petitioners that they did not know about the compromise in this Second Appeal is untenable and not acceptable. Hence, this Court comes to conclusion that the



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petitioners have not reached this Court by way of this petition with clean hands.

10.As rightly contended by the respondents counsel, the petitioners were duly served notice of this Second Appeal, but they remained exparte. The petitioners have filed this petition under Order 41 Rule 21. Therefore, the petitioners have to satisfactorily convince this Court as to the service of notice on them. The petitioners have not stated an acceptable reason or valid reason that they have not been served appeal notice or they were prevented from hearing. On perusal of records, the petitioners were served notice and they remained exparte. As per provisions of Order 41 Rule 21, the petitioners have not satisfactorily convinced this Court by placing valid reasons. They have knowledge about the compromise decree even before filing of this petition and hence, this petition has no merits and the same is liable to be dismissed.



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11. In the result, this Civil Miscellaneous Petition is dismissed.”

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/04/2024

Sub Assistant Registrar
(CS-I/II/III/IV)

TO

1. The Subordinate Judge, Palani, Dindigul,

2. The District Munsif, Oddanchatram,
Dindigul.

+1 CC to M/s.T.LENIN KUMAR, Advocate (SR-17432[F] dated 01/04/2024)

+1 CC to M/s.C.EZHILARASU, Advocate (SR-17779[F] dated 02/04/2024)



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ORDER DATED : 28/03/2024

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ORDER

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IN

SA(MD) No.764 of 2011

SI-(10.04.2024) 14P/ 5C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.