



A.S.No.78 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved On : 09.06.2025

Pronounced On : 17.06.2025

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

A.S.No.78 of 2022

K.Pavuna (died),

1. V.Kandhasamy.
2. K.Giri Gopal.
S/o.V.Kandhasamy,
both are No.67-C, Idayar Palayam Main Road,
Kuniamuthur Post,
Coimbatore – 641 008.

... Appellants/Respondents 2 & 4
Plaintiffs 2 & 4

/versus/

1. S.Vijaya Krishnan,
S/o.K.Subramaniam,
New Door No.6/45,
Perumalsamy Nagar,
B.K.Pudhur, Kuniamuthur Post,
Coimbatore – 641 008.

2. Smt.Vijayabanu.
W/o.Senthilkumaran,
Vathiyar Thottam, Vallal Nagar,
Pellayar Puthur, SIDCO Post,
Coimbatore.

... Respondents 1 & 2/Defendants 8 & 9



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3. K.Geetha.

D/o.V.Kandhasamy,

legal heirs of deceased sole plaintiff

No.67-C, Idayar Palayam Main Road,

Kuniamuthur Post,

Coimbatore – 641 008.

... 3rd Respondent /3rd plaintiff

Appeal Suit has been filed under Section 96 read with XLI Rule 1 of the Code of Civil Procedure, 1908 pleaded to set aside the fair and decreetal order dated 06.12.2021 allowing the application filed under order VII Rule 11 of C.P.C made in I.A.No.5 of 2021 in O.S.No.129 of 2014 and thereby rejecting the plaint in O.S.No.129 of 2014 on the file of the IV Additional District & Sessions Judge, Coimbatore.

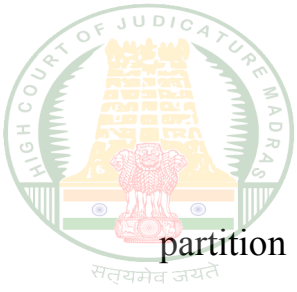
For Appellants : Mr.S.Ravichandran Sundaresan

For Respondents : Mr.K.Myilsamy, for
: Mr. R.Dilli Kumar, for R1 & R2
: No appearance, for R3

J U D G M E N T

The Appeal Suit is filed by the respondents/plaintiffs against the judgment and decree passed in O.S.No.129 of 2014, on the file of IV Additional District & Sessions Judge, Coimbatore.

2. In respect of properties left behind by Krishnasamy Konar, a suit for

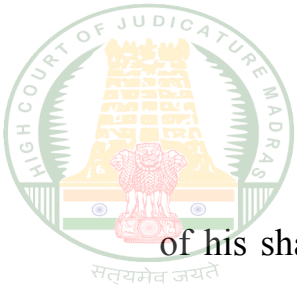


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partition filed by his daughter against the other legal heirs of Krishnasamy Konar, contending that the compromise decree entered between the parties in O.S.No.233 of 1996, dated 29.08.1996 is not valid as it was obtained by misrepresentation and fraud. Furthermore, since the final decree was not engrossed in the stamp paper, hence the decree has become infructuous. Hence, the properties which remains under due to be divided.

3. Application under Order VII Rule 11 of C.P.C., filed by the 8th and 9th defendants, who are the sons of the first defendant and the grandsons of Krishnasamy Konar. They have pleaded that the compromise decree was acted upon and the parties after taking possession of the respective shares enjoying it exclusively. Therefore, the subsequent suit for partition filed in respect of the same properties after a lapse of 18 years, is barred by law.

4. The plaint was rejected holding that, pursuant to the compromise decree passed in the partition suit O.S.No.233 of 1996, dated 29.08.1996, the suit subject properties had already been divided among the legal heirs of Krishnasamy Konar, including the plaintiff. The first defendant, in the suit had settled a portion



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of his share to his sons, who are the defendants 8 and 9. The subsequent suit to declare the earlier compromise decree, passed 18 years ago, is not maintainable.

The failure to get the decree engrossed on a Non-Judicial Stamp Paper will not render the decree infructuous. A Order XXIII Rule 3A of C.P.C., bars subsequent suit to nullify the earlier compromise decree, on the ground that the decree is unlawful.

5. The plaintiff died during the pendency of the application. Her legal heirs got themselves impleaded and contested the application. Aggrieved by the rejection of the plaint on the grounds of limitation and in view of the bar under Order XXIII Rule 3A of C.P.C., the present appeal suit is filed.

6. The learned counsel for the appellants submitted that the Court below failed to consider that, despite the compromise decree dated 29.08.1996, the parties continued to be in joint possession and the earlier decree was neither engrossed on stamp paper nor acted upon. In the absence of division of the properties, a fresh partition suit is maintainable.



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7. Both the questions, whether the properties continue to be in joint possession and whether the suit is barred by limitation are mixed questions of fact and law. In such circumstances, the trial Court ought not to have rejected the plaint without subjecting the parties to undergo trial.

8. It was also contended by the Learned Counsel for the appellants that a similar petition filed by the first defendant for rejection of plaint was dismissed. The present petition is filed by the sons of the first defendant. The trial Court erred in entertaining the second petition for the same reasons, after the dismissal of the first petition.

The point for determination:-

Whether rejection of plaint on the ground of limitation and barred under Order XXIII Rule 3A of C.P.C., is in accordance to law in force?

9. The suit for partition laid on the following grounds:

a) The earlier compromise decree obtained by fraud and



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misrepresentation.

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b) The compromise decree not acted upon. The parties are still in joint possession.

c) The earlier compromise decree not engrossed on the Stamp paper, hence the decree has become infructuous.

10. The Hon'ble Supreme Court in *S.P.Chengalvaraya Naidu vs. Jagannath*, reported in (1994) 1 SCC 1, it is held that, fraud and misrepresentation are questions of fact. Decree obtained by playing fraud on the Court is *non est* in law for all time and the same can be challenged at any time, even in a collateral proceedings. But then, the plaint must clearly disclose how the fraud was committed.

11. In the instant case, it is not the case of the plaintiff that she came to know about the compromise decree only soon before filing the suit. In fact, the plaintiff is one of the party to the earlier suit in O.S.No.233 of 1996, which was decreed 18 years ago based on the compromise entered between the parties. She did not questioned the validity of the compromise decree within the time



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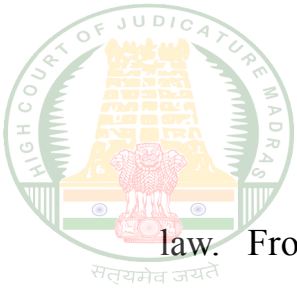
prescribed, despite she had knowledge of the decree.

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12. Even in the present suit, the plaintiff's contention is that she agreed to the compromise believing the promise made by the first defendant that he will compensate her for the difference in value at a later point of time, but he failed. The averment in the plaint, even if taken to be proved, it will not be a ground to vitiate a decree passed by the Court based on compromise between the parties. If at all there was any breach of promise, the plaintiff ought to have sought redressal for the said breach within the period of limitation prescribed.

13. This Court finds that the plaint averments regarding promise to pay money for the difference in value is without any base. The breach of any such promise cannot be termed as fraud or misrepresentation. More so, for breach of promise not form part of the terms of compromise, the decree cannot be declared as null and void that too after 18 years of its existence.

14. Order VII Rule 11 (d) of C.P.C., empowers the Court to reject the plaint where the suit appears, from the statement in the plaint, to be barred by any



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law. From the statements, in the plaint, it is clear that though the subject suit is filed to declare the earlier compromise decree as null and void on the ground of fraud and misrepresentation. The said prayer in this suit squarely covered under Order XXIII Rule 3A of C.P.C., which reads as below:-

“Bar to suit: No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.”

15. The learned trial Judge had clearly observed that the earlier application under Order VII Rule 11 of C.P.C., filed by the first defendant, was not dismissed on merits. While dismissing the said application, the Court failed to take note of Order XXIII Rule 3A of C.P.C., which came into force from 01.02.1977.

16. The other limb of argument put forth by the learned Counsel for the appellant is that the compromise decree passed on 29.08.1996 was never got engrossed on the Stamp paper and therefore, it has become infructuous.

17. In support of his argument, the Learned Counsel for the appellants



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had referred to the judgment of this Court in ***Ittoli Moidin Koya's son Koyatti and***

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Ors -vs- Imbichi Koya and Ors reported in ***AIR 1946 MAD 534***, wherein the Court after considering earlier Full Bench Judgment of this Court rendered in ***Ramayya -vs- Achammal: ILR 1945 Mad 160 (FB)*** and the Judicial Committee reported in ***59 MLW 196: Ram Rattan -vs- Parmanand*** concluded that, the effect of not engrossing the final decree for partition on a Non-judicial stamp paper is a curable defect. The parties can apply to the Court to issue decree engrossed in stamp paper after supplying proper Non Judicial Stamp paper. *Dehors* of the compromise decree, the factum of partition can be proved through other evidence.

18. The point as to whether the failure to get the final decree engrossed in stamp paper will render the decree infructuous been held in negative by the Hon'ble Supreme Court in ***Hameed Joharan (died) by LRs. vs. Abdul Salam (died) by LRs. reported in 2001 (7) SCC 573*** as below:-

“31. Though several other old and very old decisions were cited but in view of the pronouncement lately by this Court and as discussed herein before, we are not inclined to deal with the same in extenso, save however recording that contra view recorded earlier by different High Courts cannot



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be termed to be good law any longer.

32. The decision in *Shankar Balwant Lokhande v. Chandrakant Shankar Lokhande, 1995(3) SCC 413* case cannot but be said to be on the special facts situation and is thus in any event clearly distinguishable.

33. Be it noted that the legislature cannot be subservient to any personal whim or caprice. In any event, furnishing of engrossed stamp paper for the drawing up of the decree cannot but be ascribed to be a ministerial act, which cannot possibly put under suspension a legislative mandate. Since no conditions are attached to the decree and the same has been passed declaring the shares of the parties finally, the Court is not required to deal with the matter any further - what has to be done - has been done. The test thus should be - Has the court left out something for being adjudicated at a later point of time or is the decree contingent upon the happening of an event - i.e. to say the Court by its own order postpones the enforceability of the order - In the event of there being no postponement by a specific order of Court, there being a suspension of the decree being unenforceable would not arise. As a matter of fact, the very definition of decree in section 2(2) of the C.P.C. Code lends credence to the observations as above since the term is meant to be 'conclusive determination of the rights of the parties'



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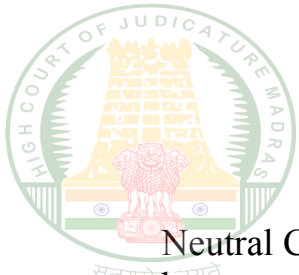
19. The statements in the plaint does not disclose any material to indicate that the compromise decree was obtained by fraud or misrepresentation. In the absence of any material to show joint possession among the parties, the plaint, on the face of the reading, suffers legal bar.

20. Engrossment on the final decree is only an administerial function. Having admitted the passing of decree, no further proof for the passing of decree is required. In this case, it is not the execution or enforcement of the said decree is sought. Contrarily, a declaration to set aside the decree already enforced is sought. Therefore, even if the final decree is not engrossed in a Non-Judicial Stamp paper, it will not render the effect of the decree infructuous. Therefore, the prayer in the suit is illconceived without any cause of action.

21. As a result, the Appeal Suit stands dismissed. There shall be no orders as to costs.

17.06.2025

Index :Yes.



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Neutral Citation :Yes.

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To:-

1. The IV Additional District & Sessions Judge, Coimbatore.
2. The Section Officer, V.R. Section, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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Pre-delivery judgment made in
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