



CRP. PD. No.1852 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:07.07.2025

Pronounced on:14.07.2025

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CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

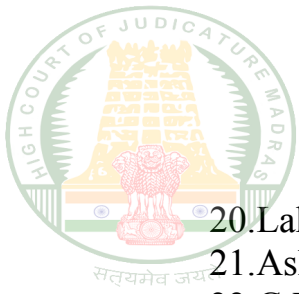
**CRP. PD. No.1852 of 2019
and CMP. No.12250 of 2019**

J.Sujatha @ July

Petitioner(s)

Vs

M.Sathya (Deceased)
1.M.Srinivasan
2.V.Sathya Datchiya @ Meera
3.V.Bhaskar
4.Hari
5.V.Shankar
6.K.Shyla
7.Y.Padmini
8.Mrs.Diliban
9.Mrs.K.Leelavathi
10.Mrs.B.Parameswari
11.Mrs.Gopikambal
12.Sundaram
13.Hemavathi sekar
14.D.Sathish Kumar
15.Bala P.Panjapakesan
16.Sri Rama Seetharaman
17.V.Subramanian
18.T.S.Sankaran
19.V.Narasimhan



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- 20.Lakshman Sridhar
21.Ashok Xavier
22.G.V.Srinivasan
23.Sridhar
24.N.Murali
25.Manikantan
26.V.Thirunavukarasu
27.Soodamani
28.V.Lakshminarayanan
29.K.Thiagarajan
30.L.Govindan
31.Parvathi
32.R.Latha
33.Ashok Ekanathan
34.S.Swaminathan
35.E.Balaraman
36.R.P.Suresh
37.K.Venkatakrishnan
38.V.D.Narsimhan
39.V.Padma
40.Lilly Kumar
41. A.Subramanian
42.V.Swaminathan
43.S.Jerald
44. A.Venkatraman
45.S.Kumar
46.S.Gopala Naicker Sons and Firm,
Rep. by its Managing Partner,
M/s.Bhaskar, Hari and Shankar,
Katpada Road, Washermanpet,
Chennai – 600 021.
47.M.K.S.Balaraja
48.A.Rajeswara Rao
49.Mrs.A.Sarada

Respondent(s)

PRAYER: This Civil Revision Petition is filed under Article 227 of the



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Constitution of India, to set aside the order of memorandum of compromise entered into between the 2nd plaintiff and defendants 1 to 4 passed by the V Additional Judge, City Civil Court at Chennai dated 29.04.2019 in SR. No.22640 of 2019 in O.S. No.732 of 2011.

For Petitioner : Mr.KV.Babu

For Respondents : Mr.A.K.Ragavalu for R1
Mr.R.Subramanian for R4 & 5
R8 & 10- Died
R13 to 47- Given up
Not Ready in Notice -
R3,12,48 & 49
No Appearance for R2, 3, 6, 7, 9 & 11

ORDER

The revision has been filed at the instance of the 5th defendant, challenging the order of the learned V Additional District and Sessions Judge, City Civil Court, Chennai, recording joint compromise memo entered into between the 2nd plaintiff and defendants 1 to 4.

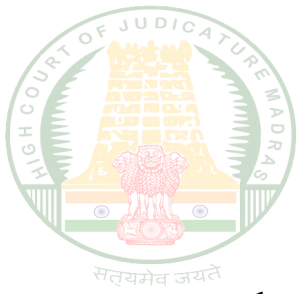
2. I have heard Mr. K. V. Babu, learned counsel for the revision petitioner, Mr. A. K. Raghavulu, learned counsel for the 1st respondent/



2nd plaintiff and Mr. R. Subramanian, learned counsel for respondents 4 and 5.

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3. The learned counsel for the petitioner, Mr. K.V. Babu, would state that the suit has been filed for partition and pending the suit, the 1st plaintiff died and thereafter, the 2nd plaintiff has proceeded to enter into a compromise with defendants 1 to 4 alone. He would refer to the joint memo of compromise that has been entered into between the parties on 25.04.2019 and state that in terms of Clause c, when the parties have agreed that in respect of item 2 of the suit schedule property, the claims of the other parties to the suit would be proceeded against, at the time of trial and shall be decided independently, there cannot be a partial partition, which is not permissible in law. He would further contend that in the event of the 2nd plaintiff succeeding in the suit in respect of item 2, then the defendants 1 to 4 would also become entitled to a right or share in the said property and the compromise is therefore unworkable and the trial judge ought not to have proceeded to record the said joint memo of compromise.



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4. The learned counsel for the petitioner would further state that under the compromise, the interest of the defendants 6 and 7 has been given a go-by and it amounted to fraud on the defendants 6 and 7. He would further state that, by recording the compromise, the suit could not have been dismissed as against defendants 1 to 4 even in terms of the memorandum of compromise, which preserved the right of the 2nd plaintiff to proceed with the trial.

5. The learned counsel would also place reliance on the decision of the Hon'ble Supreme Court in ***Kenchegowda (since deceased) by legal representatives v. Siddegowda*** reported in ***(1994) 4 SCC 294***, where the Hon'ble Supreme Court held that a decree of partition of joint family property cannot be ordered unless the whole joint family property is included in the suit and all co-sharers are impleaded.

6. He would also place reliance on another decision of the Honourable Supreme Court in ***R. Mahalakshmi Vs A. Kanchana and others*** reported in ***(2017) 11 SCC 548***, where the Hon'ble Supreme Court held that partial partition was bad in law, when some of the properties



have been found to be omitted.

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7. He would further rely on the decision of this Court in ***Gandhi v. Saminatha Gounder and others*** reported in ***AIR 2006 Mad 155*** where this Court held that non-inclusion of 15 sovereigns of jewellery in the schedule to the suit property was fatal to the relief of partition.

8. The learned counsel would also rely on the decision in ***Subbathal v. Kittamal*** reported in ***(1971) 1 MLJ 293***, where this Court has held that any compromise dealing with rights of persons who are not parties to the compromise and have not signed the terms, then the compromise would not be a lawful compromise within the meaning of Order 23, Rule 3 of C.P.C.

9. Per contra, Mr.A.K.Raghavulu, learned counsel for the first respondent would submit that the second plaintiff and the other defendants are not aggrieved by the compromise insofar as three of the suit properties, namely, item 1A, 1B and 5 and even the revision petitioner/5th defendant is not an aggrieved party as his rights have not

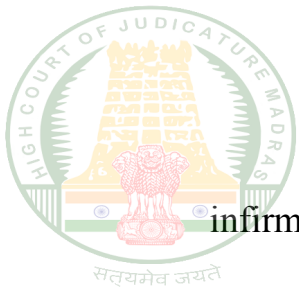


been affected in any manner. He would therefore pray for the dismissal of the revision.

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10. Mr.R.Subramanian, learned counsel for respondents 4 and 5 would state that the plaintiff cannot be compelled to proceed with the suit and at his discretion he may give up part of the claims originally made in the suit. He would also state that the 5th defendant was claiming only in respect of item 2 of the suit properties and therefore, when item 2 has been left open for trial, the 5th defendant is not in any way prejudiced or affected because of the joint compromise memo entered into between the 2nd plaintiff and defendants 1 to 4.

11. He would further state that none of the other defendants have challenged the compromise and he also makes it clear that the 2nd plaintiff does not intend to make any claim against any of the defendants other than the 2nd defendant. He would invite my attention to the written statement of the 5th defendant and fortify his contentions that the 5th defendant is interested only in item 2 of the suit property and not in respect of other properties. He would therefore state that there is no



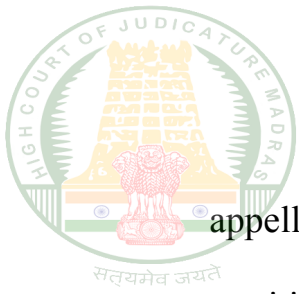
infirmity in the order passed by the Trial Court.

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1. Mr. R. Subramanian, learned counsel for respondents 4 and 5 would also rely on the decision of this Court in ***Muthusamy Gounder v. Janaki Raman*** reported in ***(1991) 2 MLJ 516***, where a compromise was entered into between the appellant and the 1st respondent, in and whereby, they have agreed to confirm the decree of the trial Court insofar as A schedule properties alone and the 1st respondent had given up his decree for mesne profits granted by the trial Court. With reference to B schedule properties, it was agreed that the appellant would take 2/3rd share in the house in one village and the 1st respondent would take the 2/3rd share in the house in another village. The 1/3rd share belonging to the 3rd respondent in B schedule property was left intact.

2.

13. This Court held that the compromise amounted to the appellant abandoning his claim to A schedule properties and the 1st respondent as quid pro quo had abandoned his claim for mesne profits. Like in this case, the 3rd respondent therein attacked the said compromise between the



appellant and the 1st respondent contending that it was invalid and in a partition action such a compromise is not permissible. This Court, negating the contentions of the 3rd respondent, held that a compromise with regard to specific items in B schedule properties was permissible as it was clear from the pleadings as well as the judgment of the Court below that the appellant and the 1st respondent and the 3rd respondent were entitled to 1/3rd share each and therefore as long as the 3rd respondent's 1/3rd share was not affected, the compromise entered into was very much valid.

14. I have carefully considered the submissions advanced by the learned counsel and also gone through the order of the learned trial Judge recording the compromise between the 2nd plaintiff and the defendants 1 to 4.

15. At the outset, as contended by the learned counsel for the respondents, Mr.A.K.Raghavalu and Mr.R.Subramanian, the stand of the 5th defendant by way of written statement was only that there was a decree passed in O.S.No. 135 in 1965 in and whereby, the 2nd item of property was allotted to the 5th defendant's father and his brothers, who



have subsequently entered into a family arrangement on 26.08.1970 and the 2nd item of property was allotted to the defendant's father under the said family arrangement and that ever since 1970 the defendant's father and thereafter the defendant have been in possession and enjoyment of the 2nd item of property.

16. The 5th defendant has not claimed any right in respect of any of the other properties. Now coming to the memo of compromise that has been entered into between the 2nd plaintiff and defendants 1 to 4, it is seen that the compromise is not in respect of item 2 property over which the 5th defendant stakes absolute claim. The compromise is in respect of only other properties. The defendants 6 and 7 are not aggrieved by the said compromise entered into between the 2nd plaintiff and defendants 1 to 4. However, by filing memo of objections, it is only the 5th defendant who has contended that there cannot be a partial partition in law and that the compromise entered into between some of the parties leaving out legal heirs is not a lawful compromise. The only contention of the learned counsel for the petitioner is that, in the event of the Trial Court ultimately coming to the conclusion that item 2 of the property is available for



partition as sought for by the 2nd plaintiff, then defendants 1 to 4 would also become entitled to a right and in such circumstances, the compromise seeking for dismissal of the suit as against defendants 1 to 4 is not permissible.

17. The 2nd plaintiff in and by the said joint memo of compromise, has given up claims in respect of items 1A, B and 7 grounds in item 5 of the suit property. The defendants 1 to 4 have expressed no objection for allotting item 5 property to the 2nd plaintiff and defendants 1 to 4 have also given up their rights in item 5. Insofar as item 2 is concerned, the claim of the plaintiff is resisted only by the 2nd defendant. In fact the learned counsel for respondents 4 and 5 would also state that this Court can even record that respondents 4 and 5 will not claim any share in item 2 of the suit property in the event of the 2nd plaintiff ultimately succeeding in the suit for partition.

18. As held by this Court in *Muthuswamy Gounder*'s case, (referred herein supra), when item 2 of the scheduled property is not sought to be compromised, the 5th defendant cannot have any grievance as his right or



interest has not been prejudiced or compromised in any manner. The memo of compromise also records that insofar as item 2 of the suit properties, trial will be proceeded.

19. As a plaintiff, the second plaintiff is certainly entitled to withdraw/contest against all or some of the defendants at any point of time. The same cannot be questioned by the 5th defendant and having gone through the written statement of the 5th defendant, I see no infirmity in the order of the Trial Court giving reasons and recording the compromise.

20. Further, even under Order 23, Rule 3 of CPC, if the Court is satisfied that a suit has been adjusted wholly or in part, by any lawful agreement or compromise in writing and signed by the parties, then the Court shall order such compromise or satisfaction to be recorded and pass a decree in accordance therewith, so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit.



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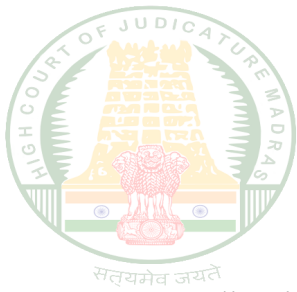
21. In view of the express phraseology employed in Rule 3 of Order 23 CPC, there is no impediment for the Court to record satisfaction or compromise even in respect of a part of the suit claim. Therefore, the question of applying the ratio laid down in the above referred cases relied on by Mr.K.V.Babu, will not in any manner come into play, in the facts of the present case. The compromise that has been recorded between 2nd plaintiff and defendants 1 to 4 cannot be termed as a partial partition since in respect of 3 items of properties, the parties interested have conclusively entered into a compromise, leaving item 2 alone open for adjudication by the Court. Therefore, the present compromise memo will not be hit by the principle of partial partition.

22. Insofar as the decision in *Subbathal's* case, (referred herein supra), the issue was whether consent decree in an earlier suit would operate as *res judicata* as against the plaintiff and under such circumstances, it was held that if the compromise dealt with the rights of persons who are not parties to the compromise and have not signed the same, then alone it would not be a lawful compromise. In the present



case, it is not so. None of the rights of the revision petitioner have been taken away by the said joint memo of compromise. Therefore, the compromise entered into in respect of other properties over which the revision petitioner herself does not stake a claim can certainly be recorded by the Trial Court.

23. Though, the learned counsel for the petitioner also contended that, rights of defendants 6 and 7 have also been affected, such other defendants have not chosen to challenge the compromise memo and in any event, the 2nd plaintiff and defendants 1 to 4 have recorded the compromise in respect of items 1A, 1B and 5 of the suit schedule properties alone and as the plaintiff cannot be prevented from withdrawing his claim in respect of part of the relief originally sought for, the Trial Court has therefore, not committed any error in accepting the compromise. The order is a well reasoned order, finding that the 5th defendant has no right to object to the compromise entered into between the 2nd plaintiff and defendants 1 to 4 and that the compromise does not result in a partial partition.



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24. In view of the above discussions, the Civil Revision Petition is dismissed. Connected Miscellaneous Petition is also dismissed. No costs.

14.07.2025

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Index : Yes
Internet : Yes

To:

The V Additional Judge,
City Civil Court, Chennai.

P.B.BALAJI, J.,

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Pre-delivery order in
CRP. PD. No.1852 of 2019
and CMP. No.12250 of 2019



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