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C.R.P.No.5198 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2025

CORAM

THE HON'BLE Mr. JUSTICE N.SATHISH KUMAR

C.R.P.No.5198 of 2024
and C.M.P.No.29068 of 2024

N.Lokeshwari

... Petitioner

Vs.

1. Amutha
2. N.Prasanth
3. Praveena

... Respondents

Prayer :- Civil Revision Petition filed under Section 115 of C.P.C., to set aside the order dated 28.11.2024 made in E.P.No.5265 of 2022 in O.S.No.271 of 2017 on the file of the IX Assistant City Civil Court, Chennai.

For Petitioner : Mr.N.Manokaran
For Mr.Ganeshan

For Respondents : Mr.P.Saranath

ORDER

Challenging the impugned order dated 28.11.2024 passed by the execution Court thereby ordering delivery, the present revision petition has been filed.

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2. The revision petitioner is the plaintiff and the respondents are the defendants. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. Brief facts of the case as follows :- The suit has been filed originally in O.S.No.271 of 2017 by the revision petitioner as against the respondents herein for claiming partition. According to the plaintiff, she is the daughter of the first wife of late Narayanan, which has been disputed by the defendants in the suit. According to the defendants, the first defendant is the first wife of the said Narayanan and other defendants 2 & 3 are born through the first wife.

4. Though the said contention has been raised, in the suit, a compromise was entered between the parties, wherein the compromise decree has been passed by the IV Additional City Civil Court, Chennai. The compromise recorded by the parties is as follows :-

“COMPROMISE MEMO FOR CONSENT DECREE



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TO BE PASSED

The plaintiff and defendants have entered into following memo of compromise.

1. The plaintiff and defendants are the legal heirs of deceased S.Narayanan died intestate on 04.01.2013.

2. The deceased Narayanan during his life time purchased the suit schedule mentioned properties 3 items in his name.

a. The house and premises bearing Plot No.147, Block No.94, T.S.No. 49, Old Survey No. 242/1, R.S.Nos. 242/1 & 243/1 Kodampakkam Village, Door No.14, Subramaniya Salai, Saidapet, Chennai 600 015, measuring an extent of 1287½ sq.ft, and 1338 sq.ft., in total 2626 sq.ft., vide Document No. 485/1998 & 486/1998 in the name of S.Narayanan.

b. All that part and parcel of house and site situated at Mambalam, Guindy Taluk, Saidapet Village, Door No.8, Amma Kannamma Street, Saradhi Nagar, Saidapet, Chennai 600 015, bearing S.R.No.86-Part, Block No.11, T.S.No.2, measuring an extent of 1196 sq.ft., vide Document No. 5496/2011 in the name of S.Narayanan.

c. All that part and parcel house and site situated at Venpakkam Village, Kacheri Road, Ponneri -2, bearing Survey No.520/2C, 2B measuring an extent of 3121 sq.ft.,



vide Document No. 5039/2006 in the name of S.Narayanan.

3. The said Late Narayanan established the business under the name & style of M.G.R. Galaxy network cable business also run by the 2nd defendant herein after the death of S.Narayanan.

4. It is further state that the defendants after the death of S. Narayanan collected all the rent income including the schedule mentioned property and also the revenue from the said business nearly Rs.50,000/- (Rupees fifty thousand only).

5. It is state that after the discussion the plaintiff and defendants agreed that the suit schedule items of properties 2 & 3(in this memo referred as b & c) are allotted to the plaintiff and no interest or right over the same to be claimed by the defendants herein after. The defendant shall execute the necessary deed of release infavour of the plaintiff in respect of the suit schedule item No.2 & 3 of property after the Decree of compromise under the cost of the defendants.

6. The plaintiff shall execute the release deed infavour of defendants in respect of the schedule 1 property in this memo referred as (a) under the cost of the defendants.



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7. It is further state that the defendants agreed to give necessary consent and sign necessary application to obtain Patta in favour of the plaintiff in resepct of both item 2 and 3 mentioned in suit schedule property and also agreed to vacate the existing tenants by refunding the advance amount and hand over the vacant possession of the properties to the plaintiff within three months from the decree of compromise.

8. It is stated that the defendants agreed to hand over all the original title document and parent documents and other revenue documents to the plaintiff in respect of the property item No. 2 & 3 in the memo refereed as b &c.

9. It is further submit that the defendants herein admitted to give cash in hand to the plaintiff for the sum of Rs.2,00,000/- (Rupees Two Lakhs only) as full and final settlement in respect of monitory claim from the defendants in all respect.

10. It is agreed that the plaintiff would not have any claim in the Cable T.V business or income from the same in future and relinquished her right in final quit.

11. It is further agreed by the plaintiff and her mother smt. Rajee that they will vacate the premises bearing No.9, Ramasamy Street, Saidapet, Chennai 600 015 within 1 year from the date of this compromise



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derived on before this Honble Court hand over vacant possession without any reservations to Deenadayalan.

12. The above Suit to be disposed of by recording above terms of compromise entered between the parties herein.”

There is no dispute with regard to compromise decree. None of the parties have any grievance over the compromise.

5. The issue now arises for consideration is only with regard to delivery of property in clause No.11. In the compromise decree, the plaintiff has been allotted certain properties and she has agreed to hand over the premises bearing No.9, Ramasamy Street, Saidapet, Chennai, to one Deenadayalan, who is the brother of late Narayanan. It is to be noted that the premises bearing Door No.9, which was referred in Clause 11 of the compromise, was not subject matter of the suit. Now it appears that the plaintiff and her mother failed to hand over the possession as agreed in the compromise decree to the said Deenadayalan. Execution petition has been filed by the defendants in the suit for delivery of possession, wherein a contention has been raised by the plaintiff that the said premises No.9 was



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not a subject matter of the suit and the said Deenadayalan was also not a party to the suit. Therefore the plaintiff refused to deliver the possession.

However, the executing Court allowed the execution petition and ordered to deliver the possession. Challenging the said order, the present revision petition has been filed.

6. When the matter came before this Court, this Court by an order dated 17.12.2024, directed the revision petitioner to implead the said Deenadayalan. However, till now the implead application has not been filed for the reasons best known to the plaintiff. However, realising the pendency of the revision petition, the said Deenadayalan has appeared before this Court on the last hearing itself and today also he is present. Since the issue relates to the small portion of the compromise, which is also part and parcel of the compromise decree, this Court, in order to give quietus to the issue, by invoking the power under Order I Rule 10 of the C.P.C., this Court *suo motu* impleaded the said Deenadayalan as respondent No.4 in the matter.



7. The main contention of the learned counsel appearing for the petitioner/plaintiff is that the said Deenadayalan was not a party to the suit and the defendants cannot step into the shoes of Deenadayalan to seek delivery of property to Deenadayalan. Further when the said Deenadayalan was not a party to the suit and the premises bearing door No.9 was not the subject matter of the suit, though the plaintiff had agreed to vacate the premises, the remedy of Deenadayalan is elsewhere and not in the execution petition. As far as the defendants are concerned, they cannot step into the shoes of Deenadayalan. They are not the decree holders in favour of Deenadayalan and therefore, the order of the executing Court cannot be sustained. Further the suit has been decided only on the agreement between the parties. When the compromise was not in between the parties and he was not a party to the suit, the said decree cannot be executed before the Court of law.

8. Whereas, the learned counsel appearing for the respondents would submit that the compromise has been reached including handing over the possession of the particular building, though the said property was not a



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suit property. The fact remains that the said property was also owned by Narayanan. Therefore, according to them, only in order to give quietus, the compromise had been entered. Having taken the benefits of the compromise decree for the larger extent, now the plaintiff cannot contend that the decree with regard to small portion is inexecutable.

9. Heard Mr.N.Manokaran, learned counsel appearing for the petitioner and Mr.P.Saranath, learned counsel appearing for the respondents. I perused the entire materials placed before this Court.

10. As far as recording the compromise is concerned, there is no doubt that the compromise can be entered between the parties to the suit not only in respect of the suit properties but also other properties. Order XXIII Rule 3 of Civil Procedure Code makes it clear that the parties to the suit can bring all the properties whether or not those properties are the subject matter of the suit.



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11. Be that as it may, in the given case, the suit has been filed in respect of three items of the suit properties and the compromise was recorded to the effect that the first item was allotted to the defendants 1 to 3 and the items 2 & 3 were allotted to the plaintiff. The item Nos. 2 & 3 were allotted to the plaintiff subject to the condition that the plaintiff has to vacate the premises bearing door No.9, within one year from the date of compromise and hand over it to the said Deenadayalan.

12. It is also relevant to note that premises in Door No.9 is adjacent to the property at Door No.8, which has been allotted to the plaintiff in item No.2. When the parties agreed upon certain settlement keeping in view the family situation and the plaintiff had specifically agreed to hand over the premises bearing No.9, to be used by his uncle viz., Deenadayalan, who is none other than the brother of her father, now the plaintiff cannot take advantage to contend that the decree as far as handing over the possession in respect of properties bearing No.9 is inexecutable.



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13. It is also relevant to note that though the said Deenadayalan was not a party to the suit and the property bearing No.9 was also not subject matter of the suit, the fact remains that the plaintiff and other defendants had agreed to divide the properties, subject to the condition that the plaintiff, who is in occupation of premises bearing No.9, will hand over the same to Deenadayalan within a period of one year. Though it was referred “to hand over to Deenadayalan”, the Court can very well affirm that it was agreed by the plaintiff to hand over the possession to the defendants 1 to 3 alone, taking into consideration the family circumstances.

14. Be that as it may, having accepted to vacate the premises within a year, the plaintiff is estopped from taking a different stand that the decree is inexecutable in respect of that property alone. The plaintiff cannot approbate and reprobate, taking undue advantage and having acquired title based on the same compromise decree, cannot contend that she will not hand over the possession.



15. The Hon'ble Apex Court in the judgment reported in **(2009) 6 SCC 194** in the case of ***Sneh Gupta Vs. Devi Sarup and ors.***, held as follows:-

“24. Order XXIII, Rule 3 of the Code of Civil Procedure provides that a compromise decree is not binding on such defendants who are not parties thereto. As the appeal has been allowed by the High Court, the same would not be binding upon the appellant and, thus, by reason thereof, the suit in its entirety could not have been disposed of.

25. The court has also a duty to prevent injustice to one of the parties to the litigation. It cannot exercise its jurisdiction to allow the proceedings to be used to work as substantial injustice.

26. A consent decree, as is well-known, is merely an agreement between the parties with the seal of the court superadded to it. {See Baldevdas Shivilal and Another v. Filmistan Distributors (India) P. Ltd. and Others [(1969) 2 SCC 201], Parayya Allayya Hittalamani v. Sri Parayya Gurulingayya Poojari and Ors. [JT 2007 (12) SC 352]}.”

Though the provision of C.P.C., will not permit the compromise in respect



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of the property of parties not party to suit, this Court taking note of the conduct of the parties and compromise itself effected with a condition that the premises bearing No.9 has to be handed over, the conduct of the party cannot be ignored altogether. The parties who take advantage cannot be allowed to make themselves unjust enrichment, having filed solemn affidavit before Court of law, now they cannot go back to make unjust enrichment.

16. Therefore, only on that context, this Court is inclined to exercise its power under Article 227 of the Constitution of India. Though, the condition in clause No.11 of the compromise directed the plaintiff to hand over the possession to Deenadayalan, the plaintiff has to necessarily hand over the possession to the defendants 1 to 3 in the suit, in turn they would hand over the same to Deenadayalan. Accordingly, the trial Court order directing the plaintiff to deliver the possession does not require any interference from this Court.

17. At this juncture, the learned counsel appearing for the



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petitioner submitted that the petitioner/plaintiff is in advanced stage of pregnancy and she requires some time to vacate the premises and seeks six months time. The plaintiff has also filed an affidavit to that effect. Considering the fact that the plaintiff is in advanced stage of pregnancy, this Court granted time for vacating the premises till 31.07.2025. The affidavit of undertaking is taken on record. If there is any violation in respect of undertaking, the plaintiff will be straight away proceeded with contempt of Court.

18. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

06.01.2025

Index : Yes/No

Neutral Citation : Yes/No

Speaking order/Non-speaking order

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The IX Assistant Judge,
City Civil Court,
Chennai.



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N.SATHISH KUMAR, J.

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