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CRP. Nos.449 & 1714 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS
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THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. Nos.449 & 1714 of 2019
and CMP. No.10992 of 2019**

CRP. No.449 of 2019:

1.N.Kuppan @ Durai (Died)
2.Navaneedha Rani
3.D.Indirani
(third petitioner is brought on record as
Lrs of the deceased P1 vide order dated 27.11.2023)

Petitioners

Vs

1.V.P.Srinivasan
2.A.N.Annamalai (given up)
3.D.Mohanraj
4.R.Baskaran
6.M.Balaji
7.M.Ranjith
8.M/s.Space Scape Estates P.Ltd,
represented by its Director S.Sashikanth
9.J.Murugesan

Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order in I.A. No.510 of 2014 in O.S. No.40 of 2006 dated 30.11.2015 passed by the learned Principal District Judge, Tiruvallur.



CRP. No.1714 of 2019:

1.N.Kuppan @ Durai (Died)
2.Navaneedha Rani
3.D.Indirani
(third petitioner is brought on record as
Lrs of the deceased P1 vide order dated 27.11.2023)

Petitioners

Vs

1.A.N.Annamalai (given up)
2.D.Mohanraj
3.The Sub Registrar of Registrations,
(Given up), Trunk Road,
Poonamallee, Chennai 600 056.
4.V.P.Srinivasan
5.R.Baskaran
6.M.Balaji
7.M.Ranjith
8.M/s.Space Scape Estates P.Ltd,
represented by its Director S.Sashikanth
9.J.Murugesan

Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order in Memo in O.S. No.40 of 2006 dated 30.11.2015 passed by the learned Principal District Judge, Tiruvallur.

For Petitioners : Mr.N.Suresh
for Mrs.P.Veena Suresh in both CRPs

For Respondents : **(in CRP. No.449 of 2019)**
Mr.V.Chandra Prabju for R1
Mr.V.Raghavachari,
Senior Counsel for



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Mrs.V.Srimathi for R3, R6 and R7
Mr.T.Thiyagarajan for R5
R2 & R4-given up
No Appearance for R8 & R9

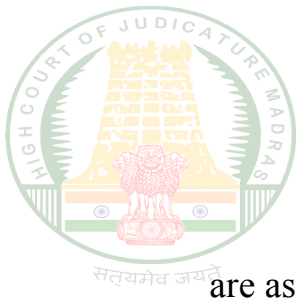
(in CRP. No.1714 of 2019)

Mr.V.Chara Prabhu for R4
Mr.V.Raghavachari,
Senior Counsel for R2, R6 and R7
Mr.K.V.Babu for
Mr.T.Thiyagarajan for R5
R1 & R3 Given up
No Appearance for R8 & R9

COMMON ORDER

These revisions are at the instance of the plaintiffs in O.S. No.40 of 2006. An Interlocutory Application in I.A. No.510 of 2014, was taken out by the 4th defendant, to set aside the compromise recorded on 22.08.2011 and the said Application came to be allowed by the Trial Court which is under challenge in CRP. 449 of 2019.

2. Insofar as CRP. No.1714 of 2019, a memo that was filed in the said suit to record full satisfaction in terms of the compromise decree dated 22.08.2011 and came to be ordered, is under challenge.



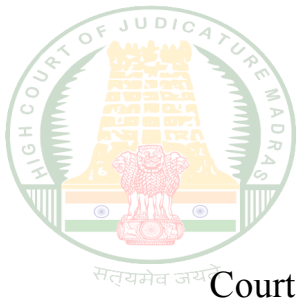
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3. The brief facts that would be necessary to decide these revisions are as follows:

The revision petitioners, as plaintiffs, filed the suit in O.S. No.40 of 2006, before the Principal District Court, Thiruvallur for specific performance of an agreement of sale. The suit came to be disposed of on a compromise memo entered into between the parties on 27.07.2011. The said compromise memo culminated in a compromise decree dated 22.08.2011. Admittedly, the revision petitioners could not pay the amount required to be paid on or before 04.11.2011. This Court in CRP. No.1716 of 2012, granted time for payment of the balance amount on or before 31.12.2012. It was contended by the revision petitioners that the amount was not deposited before the Court but paid directly to the nominees of the defendants 5 to 9 who had also acknowledged receipt of the same. The plaintiffs filed a full satisfaction memo along with the documents in support of the alleged payment made to the defendants 5 to 9. However, the said memo was not accepted by the Court and came to be rejected on 22.04.2013.

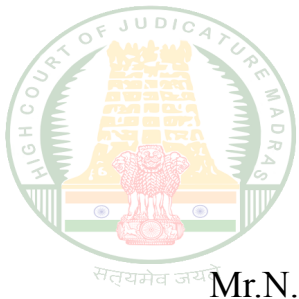


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4. Challenging the rejection of memo, the petitioners moved this Court in CRP. No.1716 of 2012 and in the said revision, a direction was issued to the Trial Court to verify whether the contentions of the plaintiffs regarding payment of Rs.17,57,50,000/-, together with interest at 9% per annum, from 04.11.2011, was actually paid to respondents 5 to 9 on or before 31.12.2012. In pursuance of the said directions of this Court in the said revision in CRP. No.1716 of 2012, the parties entered the witness box and led oral and documentary evidence. After consideration of the oral and documentary evidence, the Trial Court found that the version putforth by the plaintiffs regarding payment of Rs.17,57,50,000/- in terms of the compromise and time extended by the High Court upto 31.12.2012 was not adhered to and there has been a breach and consequently, the judgment and decree based on the compromise memo was set aside.

5. Aggrieved by the said order passed by the learned Principal District Judge, Thiruvallur, the present revision petition has been filed.



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6. Both these revisions have been heard together. I have heard Mr.N.Suresh, learned counsel for Mrs.P.Veena Suresh, learned counsel for the revision petitioners and Mr.V.Raghavahari, learned Senior Counsel for Mrs.V.Srimathi, learned counsel for the respondents 3, 6 & 7 in CRP. No.449 of 2019 and respondents 2, 6 and 7 in CRP. No.1714 of 2019 and Mr.V.Chandraprabu, learned counsel for the first respondent in CRP. No.449 of 2019 and 4th respondent in CRP. No.1714 of 2019. Mr.K.V.Babu, learned counsel for Mr.T.Thiyagarajan, learned counsel for the 5th respondent in CRP. No.449 of 2019 the 4th respondent in CRP. No.1714 of 2019. Respondents 2 and 4 in CRP. No.449 of 2019 and respondents 1 and 3 in CRP. No.1714 of 2019 have been given up.

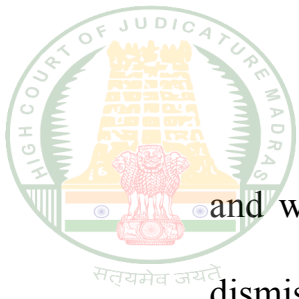
7. The learned counsel for the revision petitioners, Mr.N.Suresh, would first and foremost contend that the suit being one for specific performance and the parties having arrived at certain terms of compromise and when default clauses have been incorporated in the compromise memo, then the parties can only execute the terms of the compromise by filing appropriate Execution Petition and cannot choose to recall the compromise memo or the full satisfaction memo filed to



affirm the payments made in terms of the said compromise memo.

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8. The learned counsel for the revision petitioners, Mr.N.Suresh, would further state that the revision petitioners have examined witnesses also marked the documents in support of the proof of payment as required to be made by the plaintiffs on or before 31.12.2012 and the learned Principal District Judge has not judicially assessed the oral and documentary evidence adduced by the parties. He would attack the findings of the learned Principal District Judge regarding tampering of the joint compromise memo and that fraud has been played on the Court, by contending that in order to establish fraud or that the compromise was not lawful, there is absolutely no evidence let in on the side of the respondents. He would also refer to the oral evidence of the parties to fortify his contentions that the plaintiffs have complied with the terms and conditions of the compromise memo and there was no occasion for the Trial Court to reject the memo or even set aside the compromise decree under Order XXIII Rule 3 of CPC. The learned counsel for the revision petitioners would also state that the 4th defendant never entered the witness box and did not even choose to cross examine the plaintiffs



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and when I.A. No.68 of 2013 filed by the 4th defendant has also been dismissed and extension of time was granted to the plaintiffs and the same has also been acted upon, the 4th defendant cannot challenge the compromise decree.

9. As regards, tampering of the joint compromise memo, more specifically Clause 10, Mr.N.Suresh, learned counsel would state that this plea was never taken earlier and it has been introduced for the first time before this Court. He would further state that the 4th defendant having himself defaulted and when extension was granted and the issue of tampering had not been taken, then, the Court ought not to have set aside the compromise and rejected the memo.

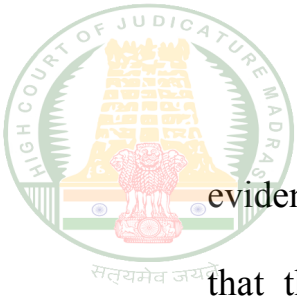
10. Mr.K.V.Babu, learned counsel appearing for the 4th respondent inviting my attention to cross examination of respondents 3 and 4 states that the plaintiffs have not complied with any of the terms of compromise and the evidence of P.W.2 was also found to be contrary to their evidence of P.W.1 and even according to the plaintiffs, only a payment of Rs.3



crores was made. He would further state that once fraud is exposed, then the Court cannot go to the rescue of the person guilty of committing fraud and he would therefore state that there is absolutely no necessity to interfere with the order passed by the learned Principal District Judge, Thiruvallur.

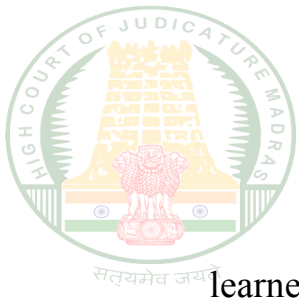
11. Mr.V.Raghavachari, learned Senior Counsel appearing for defendants 6 and 7, who are sons of second defendant, states that the plaintiffs have played fraud not only on the parties, but also on the Court. He would further state that the payments are alleged to have been only to the nominee of the plaintiffs, who is admittedly neither an agent nor even a nominee of the plaintiffs. Therefore, on the very basis of this fundamental ground that the plaintiffs themselves have made a false claim of having made payments to a non-existing agent/nominee of the plaintiff, such payments can never be treated as lawful or in discharge of the terms of compromise memo.

12. In fact, the learned Senior Counsel, Mr.V.Raghavachari, would further state that even in respect of payment, there is no proof and the



evidence of P.W.3, is relied upon, in this regard. He would further state that the plaintiffs have not been able to establish, by production of satisfactory documentary evidence, to prove source of the huge funds alleged to have been paid to the defendants. He would also state that the mother of the defendants 6 and 7 to whom, according to the plaintiffs, the monies were paid, was not even summoned to give evidence and it is clear that the plaintiffs have deliberately played fraud and they do not deserve any relief from this Court.

13. Mr.Chandrababu, leaned counsel for the 4th respondent would contend that the revision itself is not maintainable as the order dated 30.11.2015 has been challenged in October 2019, after lapse of four years and the learned counsel would further point out that in the interregnum period, the plaintiff himself has participated in the trial of the suit after the compromise decree has been set aside and therefore, there is no merit in the revisions and he would also pray for dismissal of the revisions.



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14. I have carefully considered the submissions advanced by the learned counsel appearing for the parties. I have also gone through the order of the learned Principal District Judge as well as documents exhibited before during trial and the oral evidence adduced by the parties.

15. It is not in dispute that the parties entered into a compromise memo pending suit for specific performance for an agreement of sale.

The relevant terms of the compromise are extracted for easy reference:-

“03.The remaining extend of 4.07 Acres is agreed to be sold to the Plaintiffs or their nominees/s on payment of total sum of Rs.17,57,50,000/- (Rupees Seventeen Crores Fifty Seven Lakhs and Fifty Thousand only) within 100 days from 27.7.2011, which falls on 4.11.2011.

04. If the plaintiffs fall to pay the said amount of Rs.17,57,50,000/- (Rupees Seventeen Crores Fifty Seven Lakhs and Fifty Thousand only) within 100 days from 27.7.2011 which falls on 4.11.2011, the Defendants 5, 6, 7, 8 and 9 are entitled to the remaining extent of 4 Acres and 7 Cents, which is agreed to be apportioned among themselves in the following manner:

(a) An extent of One Acre and 15 Cents marked as B in the annexed plan, together with 1/5th right in the common passage, coloured as YELLOW in the annexed plan, out of 21 cents and 1/4th right in the passage, coloured as BLUE in the annexed plan, out of 8.7 cents Sq.ft., is hereby allotted to the M.Balaji and M.Ranjith, Defendants 6 and 7 herein, jointly.

(b) An extend of 82.81 Cents marked as C in the annexed plan, together with 1/5th right in the common passage, coloured as YELLOW. In the annexed plan, out of 21 cents and 1/4th right in the passage, coloured as BLUE in the annexed plan, out of 8.7 cents and



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1/3rd right in the passage coloured as GREEN in the annexed plan out of 6.2 cents is hereby allotted to R.Baskaran, 5th defendant herein.

05.All parties being the allottees of respective lands above, agreed to bear their expenses for execution and registration of necessary documents in their favour.

06.All Parties undertake to execute and register necessary documents in favour of the respective parties above, without any further claim or demand.

.....

09.No parties are entitled to amend, alter or challenge this compromise memo, since it has been prepared and signed after mutual discussions, to the full satisfaction of all the parties, without any coercion or compulsion.

10. The plaintiffs undertake to withdraw O.S. No.450 of 2005 and O.S. No.141 of 2009 on the file DMC Poonamallee unconditionally.”

16. Even at this juncture, it is relevant to note that tampering of the said compromise memo, as claimed by the respondents is that in Clause 10, the word ‘dispose’ has been hand written at the end of the first line, that is after the word 'and', and before 'O.S. No.141 of 2009'. It is the specific case of the respondents that the said word 'dispose' never formed part of the original memo of compromise and it was undertaken by the plaintiffs to withdraw both O.S. No.450 of 2005 as well as O.S. No 141 of 2009. However, after having a tampered with the compromise memo and inserted the word 'dispose', the plaintiffs have gone ahead and



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proceeded with O.S. No.140 of 2009 and obtained a decree behind the back of the respondents. In order to ascertain first hand, the allegations regarding tampering of the compromise memo, I summoned the original records from the Trial Court.

17. I find that the Registry of the Poonamallee District Court has forwarded the pleadings and evidence of the parties. Two photo copies of the original compromise memo are available and, the word 'dispose' finds a place in the compromise memo and it was available before the Trial Court. However, I am unable to ascertain as to whether the said word was inserted prior to the parties entering into the compromise or at that time or later. In fact, one another fact is that the date '27' is hand written in the compromise memo, that is produced before the Principal District Judge, Thiruvallur and blanks in the cause title of the memo of compromise filed along with the typed set by the revision petitioners, has been filled up again in hand in the records before the District Court. The corrections in the array of parties in the cause title is also initialled, probably by the learned Counsel. However, no such initials are found in the memo of compromise produced by the revision petitioner before this



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Court and in the last page of the compromise memo, the date '27' is handwritten as already noted above and the learned counsel for the defendants 4 to 9 have additionally signed below the learned counsel for the second defendant, whereas in the compromise memo relied on by the learned counsel for the plaintiff/revision petitioners only one counsel has signed at page 4, as if he appears for all the defendants.

18. Based on the insertion of word 'dispose' at Clause 10, the plaintiffs have proceeded to rely on the said joint memo of compromise before the Trial Court and O.S. No.141 of 2009 was also decreed on 15.02.2013. It is in this connection that it is alleged by the defendants that the plaintiffs have included the word 'dispose' fraudulently and has chosen to obtain a decree behind the back of the defendants. Even with regard to proof of payments as alleged to have been made in compliance with the orders of the Court in CRP. No.1716 of 2012 dated 10.07.2013, I have scanned the evidence of P.W.1 to P.W.3 and R.W.1 to R.W.3, the receipts under which payment of Rs.4,22,37,562.50 are claimed to have been made on 31.12.2012, as acknowledged by the 5th defendant, R.Baskaran. However, the receipt dated 31.12.2012 executed by



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defendants 6 and 7 acknowledges receipt of payment of Rs.6,03,22,462/- from one M.Kalavathy. The receipt claims M.Kalavathy is the nominee of the plaintiffs in O.S. No.40 of 2006. However, nowhere it has been the case of the plaintiffs that the said Kalavathy was either the agent or nominee of the plaintiffs. A sum of Rs.3 crores is claimed to have been paid by way of Demand Draft in favour of R.Baskaran on 03.01.2013, admittedly beyond 31.12.2012. The order passed by this Court in C.R.P. No.1716 of 2012, clearly indicated that the plaintiffs had to make the payment of the entire sum of Rs.17,57,50,000/-, together with interest at 9% from 04.11.2011 on or before 31.12.2012.

19. However, even according to the plaintiffs, the lodgment schedule was issued permitting them to deposit Rs.4,22,37,562.50 payable to the 5th defendant on 31.12.2012 and admittedly, the said amount has not been lodged or deposited to the Court, in furtherance of the said challan. However on the contrary, the plaintiffs falls back on the receipt issued by the defendants 6 and 7 as if a sum of the Rs.6,03,22,642/- has been paid to the defendants 6 and 7 and a sum of Rs.4,69,32,808/- has been paid to the 8th defendant and Rs.4,45,86,168/-



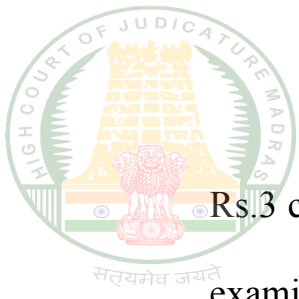
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has been paid to the 9th defendant, all on 31.12.2012. The receipts do not even indicate the manner or mode of payment. Such huge amounts cannot be transferred, in cash, as there is a statutory bar/restriction in the RBI Rules and Regulations as well. There is no supporting documents to substantiate the payments covered by the above referred receipts. The Trial Court has also found that the receipts cannot be relied upon and no attempts have also been made to establish the genuineness of signatures in the said receipts. Further, even according to the plaintiffs, the portion of the total amount by way of payment of Rs.3,00,00,000/- was after 31.12.2012, as admittedly, the Demand Draft favoring the 6th respondent is dated 03.01.2013.

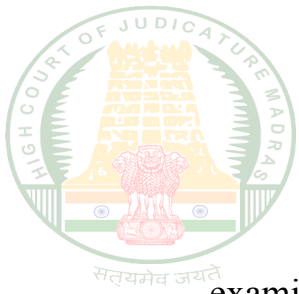
20. Insofar as the oral evidence, P.W.1, one Navaneetha Rani was examined and has as admitted in cross examination that she did not witness the payment made by her employer, Ramki Wavoo Developers to the 5th respondent. Though she claims that a portion of the amount was paid by cheque, such fact was not recorded in the receipt. One A.L.Raja has been examined as P.W.2. His version is that on 03.01.2013, a sum of



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Rs.3 crores was paid by him to the 5th respondent, Baskaran. In his cross examination, P.W.2 admits that a sum of Rs.1,22,37,562.50 was admittedly not paid but withheld. P.W.2 also states that payments were made by cheques and however, the same has not been substantiated in evidence. To a suggestion put to P.W.2 that on 31.12.2012, no payment was made and that Baskaran, in good faith, had executed the receipt and the same has been misused, is however, denied. One Paramiah, has been examined as P.W.3, in his cross examination, he has stated that on 31.12.2012, no money was paid to Baskaran, 5th defendant and that the cheque issued on 31.12.2012 was taken back and kept in their Office. The first respondent, Baskaran in his evidence has stated that only on 03.01.2013, a sum of Rs.3 crores was paid by way of Demand Draft and as agreed on or before 31.12.2012, the amount of Rs.,4,22,37,652/- was not paid. P.W.1 admits his signature in the receipt dated 31.12.2012 marked as Ex.P1. He has denied the suggestions put to him that on 31.12.2012 cheque to the tune of Rs.4,22,37,562.50 was handed over to him. In his cross examination, by the learned counsel for the defendants 2, 6 and 7, he has denied any compromise with the second defendant and only in pursuance thereof, a sum of Rs.3 crores alone was paid to him.



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21. The 6th defendant, son of second defendant, Balaji has been examined as R.W.3. He has stated that the amount agreed to be paid by the plaintiff was not paid. He further stated that as regards apportionment of the monies, separate agreement was entered into between defendants 4 to 9 and even under the said agreement, the sixth defendant has not received any money. In his cross examination, he has stated that he has not brought the subsequent agreements between the defendants 4 to 9 to the notice of this Court. In cross examination by the learned counsel for the plaintiffs, he has admitted that in terms of the said agreement, a sum of Rs.50,00,000/- alone was to be paid to the defendants 6 and 7 and that he has knowledge of the fact the plaintiffs, have deposited the said money before the Court. The learned Trial Judge assessing the said oral and documentary evidence on record before him, in order to ascertain the truth in the claim of the plaintiffs, that entire amounts have been paid on or before 31.12.2012, has threadbare discussed the evidence available on record.

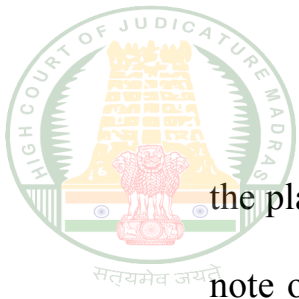
22. In terms of the compromise, as rightly found, the evidence of the plaintiffs stood falsified, by their own witnesses P.W.2 and P.W.3. The



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learned Principal District Judge, has rightly found that the plaintiffs have miserably failed to establish entire payment of Rs.17,57,50,000/- and in fact, there is a clear admission on the part of the plaintiffs that the 5th defendant was not paid a sum of Rs.1,22,37,562.50. The learned Judge has also doubted Ex.P7 letter since in the said letter, nominees of the plaintiffs signatories and there is no necessity for the plaintiffs' nominees being informed about their own payment. The learned Judge has also rightly found that the 2nd defendant cannot confirm payments when he was admittedly not a party to the transaction and P.W.1, the 2nd plaintiff who is the signatory of Ex.P7 letter has also not been able to satisfactorily explain as to how the said letter would bind defendants 5 to 9.

23. Admittedly, it was defendants 5 to 9 who had to confirm payment of monies due and payable to them and in that regard, I do not find any error in the findings of the learned Principal District Judge, that Ex.P7 cannot be relied on for proof of payment. The learned Judge has also found that Ex.P6 and Ex.P7 run contrary to each other and renders



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the plaintiffs' version totally unbelievable. The Trial Judge has also taken note of the evidence of R.W.2 that though he has signed Ex.P7 letter at the request of the 2nd plaintiff, he does not know anything about the compromise and he says that only his sons will know. Even in the evidence of R.W.3, he has stated that neither plaintiff nor the 4th defendant have honoured the compromise terms. The receipts in Ex.P1 to P4 has been found to be totally unreliable by the Principal District Judge and excepting Ex.P5, regarding payment of Rs.3 crores to the 5th respondent that too after the deadline 31.12.2012, none of the other payments have been established and in compliance to the directions issued in CRP. No.1716 of 2012, the learned District Judge found that the plaintiffs have failed to prove the entire payment within the time prescribed and proceeded to reject the full satisfaction memo. I do not find any perversity or infirmity in the findings arrived at by the learned Principal District Judge warranting interference in the revisions.

24. Even with regard to the recalling of the compromise memo, though it is contended that the issue of tampering of compromise memo



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is raised for the first time in the revision, I find that the said issue has been addressed even by the learned Principal District Judge at paragraph Nos.21 and 22. The learned Judge has rightly held that the parties have not been able to establish as to when the word 'dispose' has been included in pen. However, reading of Clause 10 and the entire compromise as a whole, the learned Principal District Judge has rightly held that there is sufficient indication of intention of the parties that they have agreed to withdraw the suit unconditionally and not reserved a right to proceed with O.S. No.141 of 2009 and obtain a positive decree. The learned Judge has also rightly found that at the time of entering into the joint memo of compromise on 27.07.2006, the parties were conscious of their respective obligations and right and also terms of compromise and it is only the subsequent conduct viz., tampering of the terms of compromise which has vitiated the compromise decree. The learned Judge has assessed the evidence and come to the conclusion that the plaintiffs have breached Clauses 2, 3 and 10 and not only plaintiffs, but even the defendants have breached the Clauses of the compromise and therefore, the compromise decree cannot be executed and has only become redundant, leaving the parties to workout their remedy on merits in their



respective cases. Again these findings do not warrant interference in revisions that too, under Article 227 of the Constitution of India.

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25. Moreover, as rightly contended by the learned counsel Mr.Chandraprabu, the order of the learned District Judge was passed on 30.11.2015. After the memo of compromise was set aside, the parties have admittedly proceeded with trial in the suit in O.S. 40 of 2006 and the plaintiffs have fully voluntarily, and consciously participated in the Trial and after lapse of 4 years,for reasons best known to them, chosen to wake up from deep slumber and challenge the order passed in the compromise memo as well as in I.A.No.510 of 2014. No doubt, there is no limitation period for filing a revision under Article 227 of the Constitution of India. However, this Court cannot shut its eyes when the delay is prejudicial to the interest of the other parties and the conduct of the revision petitioner also smacks of malafides and delay also remains unexplained. If really the revision petitioners were aggrieved by the common order passed in the memo and Interlocutory Application under Order XXIII Rule 3 of CPC, doubting the huge payments of Rs.17 crores and odd, then the plaintiffs would have certainly knocked at the doors of



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this Court without any delay whatsoever. The fact that they have accepted the said order and voluntarily participated in the trial of the suit, post the recalling the compromise memo is itself sufficient to dismiss the revision petitions. The plaintiffs have not been diligent in approaching this Court and therefore, even on the ground of delay, I am unable to entertain the revision petitions.

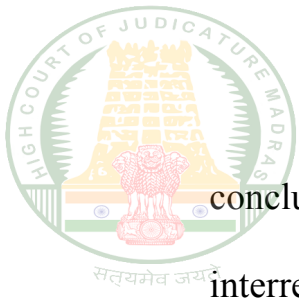
26. The learned counsel for the petitioner has placed reliance on the decision in *Amtheshwar Anand V. Virender Mohan Singh and others*, reported in *AIR 2006 SC 151*, where the Apex Court held that when parties have finally resolved disputes with regard to their shares of the suit property, any default committed thereafter, will not give rise to a ground to rescind the compromise memo. In *Bijayshree Resources Limited, Vs. Subasree Real Estates*, reported in *2016 (6) CTC 172*, Hon'ble Division Bench of this court held that mere inclusion of a third party would not affect the compromise, when terms are acted upon, except for withdrawal of the suit. In such circumstances, the Hon'ble Division Bench of this Court held that it is not necessary that the said issue can be decided only after trial and held that the memo of



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compromise was final and binding on the parties. In the facts of the said case before the Hon'ble Division Bench, the issue was whether the MoU was implemented or not and the Hon'ble Division Bench held that in such circumstances, the compromise was enforceable in independent proceedings and the requirement under Order XXIII Rule 3 had been fully met, excepting for withdrawal of the suit which was agreed upon. Even in the decision of the Hon'ble Supreme Court in *Amtheshwar Anand's* case (referred herein supra) finding that the pleading regarding fraud was grossly inadequate and mere non payment of monies under the compromise decree was not supportive of a ground for setting aside the decree, the Hon'ble Supreme Court did not interfere with the joint compromise memo. However, I do not find these decisions applying to the facts of the present case.

27. In the earlier round of revision in CRP. No.1716 of 2012 this Court specifically directed that the Trial Court to go into the issue as to whether the plaintiffs have paid the entire sum of Rs.17 crores on or before 31.12.2012. In compliance with such exercise, the Trial Court, upon proper assessment of the oral and documentary evidence, has



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concluded that the plaintiffs have not paid the said amount. In the interregnum period, the allegations that the compromise memo has been tampered was also brought up before the learned Judge and the learned Judge has found that the compromise memo appeared to have been tampered since the parties had unequivocally agreed to the suits being withdrawn and by including and relying of the word 'dispose', the plaintiffs have mischievously proceeded with O.S. No.141 of 2009 and obtained a decree. Therefore, on an over all consideration of the evidence available on record, the Application under Order XXIII Rule 3 CPC was allowed by the learned District Judge.

28. The respondents have relied on *Pushpa Devi Bhagat (Dead) through legal heir Sadhana Rai (Smt) Vs. Rajinder Singh and others*, reported in (2006) 5 SCC page 566, where the Hon'ble Supreme Court summed up the legal position with regard to Order XXIII, Rule 3 CPC and reiterated that (i) no appeal is maintainable against a consent decree in view of the specific bar under Section 96 (3) CPC; (ii) no appeal is maintainable against the order of the Court recording the compromise (including refusal to record a compromise), in view of the deletion of



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Clause (m) in Rule 1, Order 43; (iii) no independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar under Rule 3-A and lastly, (iv) consent decree operates as an estoppel and will be valid and binding unless and until it is set aside by the Court that passed the consent decree, under proviso to Rule 3 of Order XXIII CPC.

29. In view of the above ratio laid down by the Hon'ble Supreme Court, I do not find any impropriety on the part of the Trial Court having taken up the Application under Order XXIII, Rule 3 CPC to recall the compromise memo. The Trial Court has also rightly found that the plaintiffs have not been able to substantiate the payments as contemplated under the joint memo of compromise and taking note of the subsequent events, viz., inclusion of the word 'dispose' in the memo of compromise and further acts of plaintiff in proceeding to obtain a decree in O.S. No.141 of 2009, which was not agreed upon by the parties under the Compromise memo, has rightly exercised powers under Order XXIII, Rule 3 of CPC, I do not find that the said order requires interference in revision under Article 227 of the Constitution of India.



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30. Accordingly, this Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

04.09.2025

rkp
Index : Yes / No
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To:
The Principal District Judge,
Thiurvallur.



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P.B.BALAJI, J.,

rkp

Pre-delivery order in
CRP. Nos.449 & 1714 of 2019
and CMP. No.10992 of 2019

04.09.2025