

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE,
DINDIGUL.
PRESENT : **THIRU. A.K. MEHBUB ALI KHAN, B.LM., LL.M.,**
PG.D.PM/IR.,
ADDITIONAL DISTRICT JUDGE, DINDIGUL.

Tuesday, the 3rd day of September 2024

I.A. No. 4/2024

-in-

A.S. No. 13/2020

1. K.Kalaimani
2. P.Mehala
3. K.Suguna
4. M.Renuka
5. K.Vijayalaksmi Petitioners 1 to 5/Appellants
6. V.O.S. Kalaimohan 6th petitioner/1st Respondent
7. Kalaiselvam 7th petitioner/3rd Respondent
8. Anitha
9. Abinaya
10. Abishek ... petitioners 8 to 10/ Respondents 5 to 7

//Versus//

V.O.S.Sivasubramaniam Chettiar ... Respondent/2nd Respondent

This petition came on 20.08.2024 before this Court in the presence of
Tvl.S.Harihararamachandran, Advocate for the Petitioners. Thiru. S.Raghuman

Hussain, Advocate for the Respondent and upon hearing the arguments on both sides and on perusal of records, this Court delivers the following :

ORDER

Petition filed by the petitioners under Order XXIII Rule 3 of CPC.

The Contentions of the Petitioners are paraphrased as follows:

2. The petitioners 1 to 5 are the appellants and the petitioners 6 to 10 are the respondents 1, 3 and 5 to 7 in the main appeal. The 2nd respondent is the brother of the respondents 1 and 3 in this appeal and the 4th defendant in the suit. This appeal is filed by the appellants against the judgment and decree dated 26.11.2019 in O.S. No. 330/2003 passed by the Additional Sub-Court, Dindigul. They had filed the suit for declaration of their title and injunction against the defendants in respect of their possession of the suit property. The defendants 1 to 4 are brothers and each one has allegedly purchased an undivided $\frac{1}{4}$ share under their sale deeds. The defendants 1, 3, and 4 accepted the claim of the plaintiff and they did not contest the suit. The 2nd defendant alone contested the suit. During the pendency of the appeal the appellants and the respondents 1, 3 and the respondents 5 to 7 who are the legal heirs of the deceased 4th defendant entered into a compromise affirming the partition agreement dated 19.10.2001 and accordingly they filed a compromise memo into this court on 12.10.2022.

The 2nd respondent did not sign the said compromise and objected the same. He cannot have any objection as his share is not involved in the said compromise between the appellants and the other respondents. The earlier application filed under Order XXIII Rule 3 CPC on 27.06.2023 was returned asking to obtain the signatures of all the parties entered into the compromise. So as advised, this petition is filed jointly by all the parties who had entered into the compromise and the petitioners pray for a decree to be passed in terms of compromise without affecting the merits of the 2nd defendant's claim.

The contentions of the Respondent/2nd Respondent are paraphrased as follows:

3. The compromise memo filed on 8.9.2022 is not valid and the respondent has filed objections to the same. The compromise petition filed by the petitioners jointly is not maintainable in law and deserves to be dismissed to be dismissed *in limine*. The suit filed by the appellants in O.S. No. 330/2003 was wholly dismissed by the trial court on 26.11.2019 holding that the sale deeds dated 5.11.1975 (Doct. Nos. 3327/1975, 3328/1975) and the sale deeds dated 7.11.1975 (Doct. Nos. 3334/1975 and 3335/1975) are genuine and acted upon and the defendants 1 to 4 have acquired title through those documents. It was also held that the partition agreement in Ex.A33 requires compulsory registration and is invalid for non registration and that it would not bind the defendants 1 and 2. Holding further that the plaintiffs have no title or

possession over the suit properties, the trial court had dismissed the suit that they are not entitled for declaration of title and injunction. The present compromise petition is filed collusively by the appellants and the respondents 1, 3 and 5 to 7 against the findings and the decree and judgment of the trial court. The terms of compromise are inconsistent and the respondents 1, 3 and 5 to 7 cannot concede the title and possession to the appellant herein against the contention that the sale deeds are valid. No declaration or injunction can be granted to the appellant who has no title or possession over the suit property. The 2nd respondent has $\frac{1}{4}$ share in the suit property and he is in possession of the same and so the appellants 1 to 5 cannot be granted the relief of declaration and injunction in respect of $\frac{3}{4}$ share in the absence of any partition between the appeal respondents. The other terms of compromise are not valid and it cannot be enforced. The details of court fees are not mentioned in the compromise petition and so no relief can be granted to the appellants in respect of $\frac{3}{4}$ share based on the compromise. The respondents 1, 3 and 5 to 7 if wanted to make any arrangements in favour of the appellants, they should do it by way of a separate documents and not by filing a compromise petition in this appeal. The terms of compromise are not clear in the petition and so no decree can be passed under order 23 rule 3 CPC. The petition must be dismissed with cost.

4. The point for determination in this petition is:

“Whether the petition be allowed?”

Answer to the point:

5. The learned counsel for the petitioners contended that the compromise is effected between the appellants and the respondents 1, 3 and 5 to 7 and the compromise memo is filed. He would further contend that even though the 2nd respondent did not agree the terms of compromise and did sign the same, it would not affect passing of a compromise decree in respect of the other parties who have signed the compromise. He would refer to the decision of the hon'ble Madras High Court in ***“Krishna Ponnusany and another Vs Dr. Punitha Anand and others”***¹ holding as

“ There was no bar in the court passing a decree based on a compromise arrived at, with one set of respondents, followed by a separate decree vis-a-vis the other set of respondents, that is, those who chose to contest the suit”.

He also relied upon another decision of the hon'ble Kerala High Court in ***“Mary Gomas and another Vs Vaitus and others”***² also holding that the court can pass a decree based on the compromise arrived at with one set of defendant, followed by a separate decree between one set of defendants vis-a-vis the other set of defendants. Therefore he would argue to record the compromise and decree the suit accordingly in respect of the parties to the compromise.

¹ 2017 SCC online Mad 36001 : (2018) 1 MLJ 799

² 2020 SCC online Ker 5313 : AIR 2021 Ker 63

6. The learned counsel for the 2nd respondent vehemently argued that the compromise now entered is against the findings of the trial court and the decree and judgment passed in the suit. These respondents 1, 3 and 5 to 7 cannot concede their rights to the appellant against the specific findings of the trial court. He would also argue that the once the trial court has held that the alleged partition agreement claimed by the plaintiffs was invalid and not acted upon, the respondents cannot now concede that the said partition agreement is valid and the said compromise cannot be recorded as it is against law.

7. This court gave anxious consideration to the arguments advance by both sides and also carefully perused the compromise memo filed by the parties. From such perusal of the compromise memo it is found that the respondents 1, 3 and the respondents 5 to 7 have conceded that the partition agreement dated 19.10.2001 is genuine and was acted upon and also that the sale deeds dated 5.11.1975 and 7.11.1975 executed by Tr. Krishnan the husband of the 1st plaintiff selling 1/4th share each to the defendants 1 to 4 were sham and nominal and for certain reasons. These respondents 1, 3 and 5 to 7 being the share holders of ¾ shares in the suit property under the said sale deeds have conceded that the plaintiffs alone have absolute title and possession over the suit properties. They have further conceded that the plaintiffs have absolute right, title and possession over the other ¼ share which is claimed by this 2nd respondent. However, they are submitted that they have no objection to pass a

decree of declaration and injunction in respect of their $\frac{3}{4}$ shares in the suit property and that they do not have objection to allow the appeal. The objection raised by the 2nd respondent is that they cannot concede the right or title in respect of the $\frac{1}{4}$ share of this respondent and so the compromise is not valid.

8. In this aspect, this court has to refer to the decision of the hon'ble Supreme Court in ***“Katikara Chintamani Dora & Ors vs Guntreddi Annamnaidu & Ors”***³, wherein it was held as under:

“Order 23, Rule 3, Code of Civil Procedure, not only permits a partial compromise and adjustment of a suit by a lawful agreement, but further gives a mandate to the court to record it and pass a decree in terms of such compromise or adjustment in so far as it relates to the suit”.

Thus, it is no longer *res integra* that a court can record a partial compromise and pass a decree in terms of such compromise *qua* the parties privy to it. However, this court is also aware that such a compromise or settlement will not be binding on a person who is not a party to it as held by the hon'ble Supreme Court in ***“Arjan Singh Vs Punit Ahluwalia and others”***⁴.

9. This court is of course aware that a partial compromise prejudicial to the interests of other parties not joining the same cannot be recognized. There may be cases where a suit had been adjusted wholly or in part by certain of the

³ 1974 SCR (2) 655 : (1974) 1 SCC 567

⁴ (2008) 8 SCC 348

parties and due to which the other parties may be affected by the recording of compromise by virtue of the nature of the suit or the nature of the reliefs prayed for. Similarly, when the interests of the several parties are inseparable, it is not open to some of them alone to compromise the matter. Therefore, this court is duty bound to find out whether the interest of the 2nd respondent is affected by the compromise made by the other parties. While considering this aspect, this court finds that the respondents 1, 3 and 5 to 7 have not only conceded title and possession of the appellants in respect of their $\frac{3}{4}$ shares, they have also conceded that the appellants have absolute title over the other $\frac{1}{4}$ share which is contested by the 2nd respondent. However, they have prayed to pass a decree only in respect of the $\frac{3}{4}$ shares against them without affecting the claim of the 2nd respondent.

10. It is equally important to note that the sale deeds dated 5.11.1975 and 7.11.1975 in favour of the defendants 1 to 4 are in respect of undivided $\frac{1}{4}$ shares each in the suit properties. Though there is a dispute about the partition agreement and the same was rejected by the trial court and is the subject matter of this appeal, the rights and interests of the parties are separable and so the 2nd respondent has a distinct and separate interest only in the $\frac{1}{4}$ share in the suit property even as per the said sale deeds. The compromise entered into between the appellants and the other respondents in respect of the distinct and separate

interest of $\frac{3}{4}$ shares will not affect his right and claim over the $\frac{1}{4}^{\text{th}}$ share. However, the compromise entered by the other respondents would not bind him and he can separately contest the appeal in respect of the said $\frac{1}{4}^{\text{th}}$ share as against the appellants. The recording of the compromise and passing of the decree qua the other respondents will not affect his right or interest as held by the hon'ble superior courts in the decisions referred above. The hon'ble supreme Court in ***“Bai Chanchal Vs Syed Jalaluddin⁵***, has held that

“There can be more than one decree passed at different stages of the same suit and that nothing precludes some of the parties to the suit to enter into a compromise.”

11. Therefore, this court is of the considered opinion that the facts and circumstances of the case permits recording of the compromise entered between the appellant and the respondents 1, 3 and 5 to 7 in respect of the $\frac{3}{4}$ shares in the suit property as it would not affect the right and interest of the 2nd respondent's claim over the remaining $\frac{1}{4}^{\text{th}}$ share in the said property. The objections raised by the respondent that such a compromise is against the findings of the trial court are misconceived and cannot be accepted because, the law permits the parties to enter into a compromise even after passing of a decree and in the appeal proceedings. After all, it is for the parties to decide whether to contest the claim of the plaintiffs or not.

12. Therefore, it is held that the petition to record the compromise and pass a decree under Order XXIII Rule 3 of CPC is maintainable and it shall be allowed. This answers the point.

In the result, the petition is allowed without cost and the compromise memo is recorded qua the $\frac{3}{4}$ shares of the Appeal respondents 1, 3 and 5 to 7. The decree be drafted accordingly. The terms of Compromise be appended to the decree.

This order typed by me directly in the laptop, corrected and pronounced in open court on this the 3rd day of September 2024.

Additional District Judge,
Dindigul