
(2014) 12 MAD CK 0043

In the Madras High Court

Case No : C.R.P (NPD) No. 2375 of 2014 and M.P. No. 1 of 2014

P. Chinnaraj @ P. Rajan

APPELLANT

Vs

C. Ramasamy

RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

Citation : (2015) 1 MadWN(Civil) 759

Hon'ble Judges : K. Kalyanasundaram, J.

Bench : Single Bench

Advocate : N. Anattd Venkatesh, Advocate, for the Petitioner; Prabhu Mukund Arunkuntar for V. Vijayakumar, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

K. Kalyanasundaram, J.—The Revision is filed seeking to strike off I.A. No. 421 of 2013 in O.S. No. 63 of 2013 on the file of Sub-Court, Tiruppur.

2. The Petitioner instituted a Smt in O.S. No.63 of 2013 against the Respondents 2 to 9 seeking Partition and separate possession of his share The Suit was filed on 9.1.2009. The parties had entered into a compromise and filed a Joint Memo under Order 23, Rule 3, to record the compromise. Based on the compromise arrived at between the parties, the Trial Court decreed the Suit on 13.10.2009. Thereupon, the 1st Respondent, filed I.A. No.421 of 2013 under Order 23, Rule 3-A, to set aside the Compromise Decree stating that it was obtained by fraudulent means The Petitioner filed his Counter and enquiry was also commenced in the Application. At this juncture, this Revision Petition is filed.

3. Mr. N. Anand Venkatesh, learned Counsel appearing for the Petitioner submitted that, the Application filed by the Third party to set aside the Compromise Decree arrived at between the parties to the Suit is not maintainable; that the Petitioner has also impleaded the Respondents 10 to 11 claiming right in the property; that the bar raider Rule 3-A of Order 23, would apply only to the parties to the Suit and the Third party can very well hie an

independent Suit. In support of his contention, the learned Counsel died upon a Judgment, of the Hon"ble Supreme Court in Banwari Lal v. Chando Devi and anr., AIR 1993 SC 1139.

4. Per contra, Mr. D. Prabhu Mukund Arunkumar, learned Counsel for the Respondent submitted that a plain leading of Rule 3-A of Order 23, would reveal that there is no distinction between the parties to the Suit and the Third party to the Suit to challenge the Decree; that when there is a specific liar in instituting a fresh Suit challenging the Compromise Decree passed in fire Suit, the Application is very well maintainable. In support of his contention, the learned Counsel placed reliance upon a Judgment of the Hon"ble Supreme Court in Horil v. Keshav and anr., 2012(1) CTC 550 (SC); 2012 (5) SCO 525.

5. It is seen from the records that the District Judge, Coimbatore, had passed a Compromise Decree in O.S. No.565 of 2009 on the basis of Application filed by the parties to the Suit, on 13.10.2009. The 1st Respondent herein has filed the Application in I.A. No. 1375 of 2010 stating that the 1st Respondent and the Respondents 10 to 14 have ?th share in the Suit property and they have been excluded while instituting the Suit and the Compromise Decree is null and void as it was obtained by fraudulent means.

6. In the Judgment reported in Banwari Lal v. Chando Devi and anr., AIR 1993 SC 1139, cited supra, the Hon"ble Apex Court has held that a party challenging a Compromise Decree can file a Petition under Proviso to Rule 3 of Order 23 or file an Appeal under Section 96(1) of C.P.C. In the Judgment, the question did not arise for consideration whether the Application filed by the Third party is maintainable. So, I am of the view that the Judgment of the Hon"ble Supreme Court is not helpful to the case of the Petitioner. In Para 13 of the said Judgment, it is held as follows:

"73, When the amending Act introduced a Proviso along with an Explanation to Rule 3 of Order 23, saying that where it is alleged by one party and denied by other than an adjustment or satisfaction has been arrived at, "the Court shall decide the question", the Court before which a Petition of compromise is filed and which has recorded such compromise, has to decide the question whether an adjustment or satisfaction had been arrived at on basis of any lawful Agreement. To make the enquiry in respect of validity of the Agreement or the compromise more comprehensive, the explanation to the Proviso says that an Agreement or compromise "which is void or voidable under the Indian Contract Act ""shall not be deemed to be lawful within the meaning of the said Rule. In view of the Proviso read with the Explanation, a Court which had entertained the Petition of compromise has to examine whether the compromise was void or voidable under the Indian Contract Act. Even Rule 1(m) of Order 43, has been deleted under which an Appeal was maintainable against an Order recording a compromise. As such a party challenging a compromise can file a Petition under Proviso to Rule 3 of Order 23, or an Appeal under Section 96(1) of tire Code, in which he can now question the validity of the compromise in view of Rule 1-A of Order 43 of the

Code."

7. In *Horil v. Keshav and anr.*, 2012 (1) CTC 550 (SC) : 2012 (5) SCC 525, the Hon"ble Apex Court has held as follows:

"9. It is true that a compromise forming the basis of the Decree can only be questioned before the same Court that recorded the compromise and a fresh Suit for setting aside a Compromise Decree is expressly barred under Order 23, Rule 3-A. It is equally true that the expression "not lawful" used in Order 23, Rule 3-A, also covers a Decree based on a fraudulent compromise hence, a challenge to a Compromise Decree on the ground "not lawful" used in Order 23, Rule 3-A, also covers a Decree based on a fraud that it was obtained by fraudulent means would also fall under the provisions of Order 23, Rule 3-A."

8. Order 23, Rule 3-A. reads as follows:

"3. Compromise of Suit.- Where it is proved to the satisfaction of the Court that a Suit has been adjusted wholly or in part by any lawful Agreement or compromise, [in writing and signed by the parties] or where the Defendant satisfies the Plaintiff in respect of the whole or any part of the subject-matter of the Suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a Decree in accordance therewith [so far as it relates to the parties to the Suit, whether oi not the subject-matter of the Agreement, compromise or satisfaction is the same as the subject-matter of the Suit].

3-A. 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."

9. A plain reading of the above provision would make it clear that a person aggrieved by the Compromise Decree cannot maintain a separate Suit on the ground that it was obtained by unlawful means. As rightly contended by the learned Counsel for the 1st Respondent, the provision does not make any distinction between the parties to the Suit and the Third party challenging the Decree passed under Order 23, Rule 3. Hence, J. do not find any force in the contentions of the Petitioner.

10. In the case on hand, the 1st Respondent has filed the Application categorically stating that he and the other Respondents 10 to 14 have ?th share in the Suit property and the parties to the Suit have obtained a Compromise Decree by playing fraud on the Court. In view of the specific bar in Rule 3-A of Order 23, and also in the light of the decision of the Supreme Court, I am of the view that the Application filed by the 1st Respondent is maintainable.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The first Additional District Court, Coimbatore shall decide the Application on merits and in accordance with law, within a period of three months from the date of receipt of copy of this Order.