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K.M. Ramanathan and Others Vs Rengasamy and Others

Court: Madras High Court

Date of Decision: Feb. 1, 2013

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 23 Rule 3, Order 41 Rule 1, Order 47 Rule 1
Criminal Procedure Code, 1973 (CrPC) â€" Section 114

Citation: (2013) 2 CTC 13

Hon'ble Judges: R. Banumathi, J; K.K. Sasidharan, J

Bench: Division Bench

Advocate: K. Duraisami, for Muthumani Duraisami in Review application No. 145 of 2007 and R. Kannan in Review application No. 172 of 2011, for the Appellant; Hema Sampath, for K. Kalyanasundaram for Respondent No. 1, P. Balaji, Advocate for Respondent No. 4 in both Appeals, P.T. Asha for Sarvabhavuman Associates for Respondent Nos. 13 to 19 in Review A. No. 145 of 2007, for the Respondent

Final Decision: Dismissed

Judgement

K.K. Sasidharan, J.
Whether in the absence of an agreement in writing, signed by all the parties, compromise of a Suit can be effected,

leading to a compromise decree, is the core issue that arises for consideration in these two Review Applications.

Review Application No. 145 of 2007:

The Second Respondent Mrs. Palaniammal, filed a Suit in O.S. No. 766 of 1981 before the learned Principal Subordinate Court, Coimbatore,

praying for a decree of partition, to divide the properties mentioned in ""A"" & ""B"" schedules into four equal shares and to allot one share to her with

separate possession and enjoyment. According to the Second Respondent, the property originally belonged to her father Viyapuri Naicker and he

died intestate in the year 1959 and he was survived by her, besides his widow and Respondents 2 & 3 and her brother Rangasami, the First

Respondent in the Review Petition. The First Respondent being the eldest son and the only male member of the family, was helping and assisting

the mother. He was looking after the agricultural operations and on account of his position as the sole male member of the family, the sisters had

complete faith in him. According to the Second Respondent, taking advantage of the advantageous position, the First Respondent played fraud by

obtaining signatures of the sisters, under the pretext that the signatures were required for getting high tension electric connection and made them to

execute documents before the Sub-Registrar. The Second Respondent, after several years, came to know that on the strength of the documents

executed by her and her sisters, the First Respondent became the absolute owner of the property mentioned in schedule ""A"" & ""B"". She also came

to know that the documents executed by her and her sisters were nothing but a Release Deed in favour of the First Respondent, releasing their

rights in the co-ownership property. The Suit was resisted by the First Respondent by filing a detailed Written Statement.

2. The learned Subordinate Judge, rejected the case of the Second Respondent. The Trial Court opined that the Release Deed dated 16th

February 1972 was genuine and it was acted upon. Accordingly, by accepting the genuineness of the Release Deed, marked as Ex. A1, the Suit

was dismissed.

3. The Judgment and Decree in O.S. No. 765 of 1981 was taken up before this Court in A.S. No. 753 of 1984. The learned Single Judge

ultimately set aside the Judgment and Decree passed by the Lower Court and a direction was issued to the Trial Court to pass a final decree in

terms of the judgment.

4. The Judgment and Decree in A.S. No. 753 of 1984 was challenged by the First Respondent before the Division Bench in L.P.A. No. 121 of

2000. The Applicants in Review Application No. 145 of 2007 were parties to the Letters Patent Appeal. During the pendency of the Letters

Patent Appeal, Respondents 1 & 2, compromised the matter and filed a Memo of Compromise dated 15th March 2004. Similarly, the First

Respondent produced a Memo of compromise stated to have been signed by the Third Respondent.

5. The Division Bench found that the Respondents 2, 7, 12 in the Appeal have not entered appearance. Respondents 11, 13, 16, 17, 23 to 25

were given up by the First Respondent/Appellant. The learned Counsel for the First Respondent submitted before the Division Bench that the

Letters Patent Appeal can be disposed of by Court as agreed to between the First Respondent (Plaintiff) and Respondents 1 & 3 (Respondents 1

& 3 in the Appeal). The Letters Patent Appeal was disposed of in terms of the Memo of compromise. The compromise decree was passed on

17th March 2004.

6. It is the grievance of the Petitioners that the First Respondent played fraud on the Court and innocent purchasers, by including the properties

assigned to the Review applicants and others on the strength of Ex. A1, in the share to be allotted to the Second Respondent. Though the Review

Applicants were all parties to the Letters Patent Appeal, notice was not given to them in the Compromise Memo. The First Respondent took

advantage of the compromise decree and received substantial properties notwithstanding the fact that the he has already disposed of several items

of property to third parties including the Petitioners. According to the Petitioners, they were not parties to the Compromise Memo and as such, the

Division Bench ought not to have passed a compromise decree in the matter, which would bind all the parties. The Petitioners therefore seek to set

aside the compromise decree passed in L.P.A. No. 121 of 2000.

Review Application No. 172 of 2011:

7. The Applicant in this Review Application was not a party to the Suit or the related Letters Patent Appeal. According to the Applicant, an extent

of 7.5 cents of land in S. Nos. 411 & 413/2 under two separate Sale Deeds were purchased by her from the First Respondent as per Doc. Nos.

1665 & 1893 of 1997 on the file of Joint Sub-Registrar, Coimbatore. The First Respondent assigned the property to her on the strength of the

Release Deed dated 16th February 1972 marked as Ex. A1. The sale was made subsequent to the decree in O.S. No. 765 of 1981. However,

she was not aware of the proceedings initiated by the Second Respondent for partition and the connected Appeal. It was only when the Advocate

Commissioner visited the property in connection with the final decree proceedings, she came to know of the compromise decree which made her

to file the Review Application.

Submissions:

8. The learned Senior Counsel for the Petitioners in Review Application No. 145 of 2007 contended that no notice was given to the Petitioners

before passing the compromise decree. The Petitioners have purchased various items of property from the First Respondent. The First

Respondent assigned the property on the strength of Ex. A1-Release Deed dated 16th February 1972. However, while compromising the matter,

he deliberately included the property assigned to third parties, including the Petitioners, in the share of the Second Respondent. By way of

compromise, he took other items of property and cheated even his sisters. The Petitioners were not aware of the compromise decree. It was only

when the Advocate Commissioner visited the property in connection with the final Decree proceedings, the Petitioners came to know of the

compromise decree and immediately, they have filed this Review Application. The learned Senior Counsel, therefore, wanted setting aside of the

compromise decree and to hear the Appeal on merits.

9. The learned Counsel for the Petitioners in Review Application No. 172 of 2011 supported the submissions made by the learned Senior Counsel

for the Appellant in Review Application No. 145 of 2007. According to the learned Counsel, the First Respondent played fraud on his sisters as

well as on the Court by filing a compromise decree without divulging the fact that he has already assigned his share of property to third parties.

According to the learned Counsel, the brother and sister have agreed to the genuineness of Ex. A1 and as such, any sale made on the strength of

Ex. A1 should be respected. The learned Counsel further contended that the Petitioner was not in the know of things and as such, she failed to

represent her case before the Division Bench.

10. The learned Senior Counsel for the First Respondent contended that the Petitioners in Review Application No. 145 of 2007 were parties to

the Suit and the related Appeal. The learned Single Judge categorically found that they have failed to prove that they are all bona fide purchasers.

The Petitioners were all represented by Counsel before the Division Bench. Therefore, it cannot be said that the compromise decree was passed

behind their back. According to the learned Counsel, final decree was passed before the disposal of L.P.A. No. 121 of 2000. The Petitioners

have not taken any interest in the subject matter and now it is too late on their part to come up with an Application to set aside the compromise

decree passed in the Letters Patent Appeal.

The Issue:

11. The core issue is whether the Division Bench was correct in passing a compromise decree in terms of Order 23, Rule 3 of Code of Civil

Procedure, without the association of all the parties to the Letters Patent Appeal.

Discussion:

12. The Civil Suit filed by the Second Respondent for partition in O.S. No. 765 of 1981, was dismissed by the learned Subordinate Judge,

Coimbatore, as per Judgment and Decree dated 10th September 1984. The Petitioners were parties in the said Suit on account of their purchase

of property from the First Respondent. The First Respondent assigned the property to the purchasers and others on the strength of Ex. A1 dated

16th February 1972. The execution of Ex. A1 and consequent sale were put in issue at the instance of the Second Respondent.

13. The Trial Court believed the defence taken by the First Respondent with regard to the genuineness of the document in Ex. A1 dated 16th

February 1972 and dismissed the Suit for Partition. The matter was taken up in Appeal. The Petitioners were all parties in A.S. No. 753 of 1984.

The Petitioners have taken up a specific contention that they are bona fide purchasers for valuable consideration. However, they have not

produced any evidence before the Court evidencing such purchase. This made the First Appellate Court to make an observation that the Court

was unable to believe their case. The learned Single Judge opined that the Release Deed was void and therefore, not binding on the Second

Respondent. Accordingly, the First Appeal was allowed. The learned Judge directed the Trial Court to pass a final decree in terms of the judgment

passed in the First Appeal.

14. The matter was taken up by the First Respondent before the Division Bench in L.P.A. No. 121 of 2000. The Petitioners in Review

Application No. 145 of 2007 were parties in the Letters Patent Appeal. We have perused the endorsement made by the Registry with regard to

the service of notice. Registry has made an endorsement that Petitioners 4, 5 & 6 were served. Other Petitioners were represented by Thiru B.

Kumarasami, Advocate.

15. During the pendency of the Letters Patent Appeal, learned Counsel for the First Respondent produced a Memo of Compromise dated 15th

March 2004. There were two Memorandums of Compromise; one executed by the First Respondent with the Second Respondent; and another

between the First Respondent and the Third Respondent. The First Memo of Compromise was signed by the First Respondent and the Second

Respondent. The Second Memo of Compromise was signed by the First Respondent and the Third Respondent. None of the other parties have

signed the Memo of Compromise. Before the Division Bench, the Counsel for the First Respondent submitted that Respondents 2, 7, 12 in the

said Appeal, though served, were not represented by Counsel. Respondents 11, 13, 16, 17 & 23 to 25 were given up. The Division Bench

thereafter disposed of the Letters Patent Appeal, recording the Memo of Compromise.

16. The Review Petitioners have now raised a moot question regarding the jurisdiction of the Court to record a compromise Memo without the

association of all the parties.

Factors to be considered before passing a compromise decree:

17. Order 23, Rule 3 of C.P.C. permits the parties to the lis to compromise the Suit. The provision regarding compromise of the Suit has

undergone a sea change on account of the amendment made to the CPC by Act 104/1976. Order 23, Rule 3 of CPC, after the amendment,

provides that compromise can be recognized by the Court only in case it was made out in writing and signed by all the parties to the Suit. The

amendment was made with a laudable object. The provision after amendment makes it clear that the compromise arrived at by the parties to the

Suit must contain the signature of all such parties. The association of all the parties to the Suit, therefore, is a mandatory requirement, for passing a

decree of compromise under Order 23, Rule 3 of C.P.C.

Legal Principles:

18. The Supreme Court in Gurpreet Singh Vs. Chatur Bhuj Goel, , held that compromise should be reduced in writing and signed by all the parties.

The Supreme Court said:

10. Under Rule 3, as it now stands, when a claim in Suit has been adjusted wholly or in part by any lawful agreement or compromise, the

compromise must be in writing and signed by the parties and there must be a completed agreement between them. To constitute an adjustment, the

agreement or compromise must itself be capable of being embodied in a decree. When the parties enter into a compromise during the hearing of a

Suit or Appeal, there is no reason why the requirement that the compromise should be reduced in writing in the form of an instrument signed by the

parties should be dispensed with. The Court must therefore insist upon the parties to reduce the terms into writing.

19. The Supreme Court in Som Dev and Others Vs. Rati Ram and Another, observed that a compromise decree can be passed only in case the

compromise is reduced to writing and signed by all the parties.

13. After the amendment of the CPC by Act 104 of 1976, a compromise of a Suit can be effected and the imprimatur of the Court obtained

thereon leading to a decree, only if the agreement or compromise presented in the Court is in writing and signed by the parties and also by their

Counsel as per practice. In a case where one party sets up a compromise and the other denies it, the court can decide the question whether, as a

matter of fact, there has been a compromise. But, when a compromise is to be recorded and a decree is to be passed, Rule 3 of Order 23 of the

Code insists that the terms to the compromise should be reduced to writing and signed by the parties. Therefore, after 1.2.1977, a compromise

decree can be passed only on compliance with the requirements of Rule 3 of Order 23 of the Code and unless a decree is passed in terms thereof,

it may not be possible to recognise the same as a compromise decree. In the case on hand, a decree was passed on 10.10.1980 after the

amendment of the Code and it was not in terms of Order 23, Rule 3 of the Code. On the other hand, as the decree itself indicates, it was one on

admission of a pre-existing arrangement.

20. In Bimal Kumar and Another Vs. Shakuntala Debi and Others, the Supreme Court indicated that compromise is nothing but settlement of

differences by mutual consent, by giving a decent burial to the dispute between the parties. The Supreme Court said:

27. It is to be borne in mind that the term ""compromise"" essentially means settlement of differences by mutual consent. In such process, the

adversarial claims come to rest. The cavil between the parties is given a decent burial. A compromise which is arrived at by the parties puts an end

to the litigate battle. Sometimes the parties feel that it is an unfortunate bitter struggle and allow good sense to prevail to resolve the dispute. In

certain cases, by intervention of well-wishers, the conciliatory process commences and eventually, by consensus and concurrence, rights get

concretised. A reciprocal settlement with a clear mind is regarded as noble. It signifies magnificent and majestic facets of the human mind. The

exalted state of affairs brings in quintessence of sublime solemnity and social stability.

21. The Supreme Court in Sneh Gupta Vs. Devi Sarup and Others, observed that a compromise decree is not binding on such Defendants who

were not parties to the memo of compromise. The Supreme Court said:

24. Order 23, Rule 3 of the CPC 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.

22. As observed by the Supreme Court in Bimal Kumar and Another Vs. Shakuntala Debi and Others, the very intention of compromise is to put

an end to the adversarial claims. The Parliament, therefore, by making amendment to the Code of Civil Procedure, wanted all the parties to sign

the Memo of Compromise so as to make a binding decree under Order 23, Rule 3 of CPC. In case some of the parties have not signed the

compromise, the dispute between the parties would remain as it is, notwithstanding the partial compromise.

23. The original compromise Memo does not contain the signature of the Petitioners or at least the endorsement of their Counsel, in token of the

receipt of notice. Except Respondents 1 to 3, none of the other parties have signed the Compromise Memo. (Even Third Respondent now claim

that she has not signed the Compromise Memo). Respective Counsels have also not signed the Memo of Compromise. As stated earlier, there is

no indication that the Counsel for the Petitioners was aware of the Memo of Compromise.

24. The statement recorded by the Court does not contain any indication that the Counsel engaged by the Review Petitioners was present before

the Court. Therefore it is evident that the Petitioners were not parties to the memo of compromise and the decree was passed in the absence of the

Petitioners and their Counsel.

25. The fact that the First Appellate Court disbelieved the sale in favour of the Petitioners would not give jurisdiction to the Court to pass a

compromise decree without their association notwithstanding their presence in the Letters Patent Appeal.

26. The learned Senior Counsel for the First Respondent contended that the Counsel representing the Petitioners was present before the Division

Bench and it was only in his presence, compromise decree was passed. We are not in a position to accept the said submission. The statement

recorded by the Court should be taken as it is. It is not open to the parties to advance arguments as to what has transpired in Court. The records

of the Court speaks itself.

27. The Supreme Court in State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, , observed that matters of judicial record are

unquestionable:

We are afraid that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial

decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena.

Judgments cannot be treated as mere counters in the game of litigation."" We are bound to accept the statement of the Judges recorded in their

judgment, as to what transpired in Court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by Affidavit

and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the

subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are

conclusive of the facts so stated and no one can contradict such statements by Affidavit or other evidence. If a party thinks that the happenings in

court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the

attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had

been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there.

28. Since the Petitioners in the Review Applications were not signatories to the Memo of Compromise, the learned Senior Counsel was correct in

his submission that the Division Bench should not have passed a compromise decree under Order 23, Rule 3 of CPC.

Scope of Review:

29. The Supreme Court in S. Nagaraj and Others Vs. State of Karnataka and Another, , indicated the concept of Review jurisdiction thus:

18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the

Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in

Public Law. Even the law bends before justice. Entire concept of Writ jurisdiction exercised by the higher Courts is founded on equity and fairness.

If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption

which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the

error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is

of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available

where the mistake is of the Court.

30. The Supreme Court in Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others, , considered the scope and ambit

of Review jurisdiction under Order 41, Rule 1 of CPC and observed thus:

88. ... Section 114 of the Code empowers a Court to review its order if the conditions precedent laid down therein are satisfied. The substantive

provision of law does not prescribe any limitation on the power of the Court except those which are expressly provided in Section 114 of the

Code in terms whereof it is empowered to make such order as it thinks fit.

89. Order 47, Rule 1 of the Code provides for filing an Application for Review. Such an Application for Review would be maintainable not only

upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is

necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the Court which would include a mistake in the nature of the undertaking may also call for a review of the order.

An Application for Review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would

depend on the facts and circumstances of the case. The words ""sufficient reason"" in Order 47, Rule 1 of the Code are wide enough to include a

misconception of fact or law by a Court or even an Advocate. An application for review may be necessitated by way of invoking the Doctrine

actus curiae neminem gravabit"".

31. In Lily Thomas, Vs. Union of India and Others, , the Supreme Court observed that in case the Court finds that the error pointed out in the

Review Petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist

and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error.

32. The Courts have to do justice to the parties. Technicalities should not come in the way of rendering justice. If it is made out that the Petitioners

were not parties to the Compromise Memo and the compromise decree was not passed in terms of Order 23, Rule 3, C.P.C., necessarily, such

decree should be set aside.

33. The learned Senior Counsel for the Petitioner in Review Application No. 172 of 2011 submitted that the parties to the Suit have confirmed the

genuineness of Ex. A1 dated 16th February 1972 in L.P.A. No. 121 of 2000 and as such, any sale made by the First Respondent on the strength

of the said document requires to be respected. We are not expressing any opinion on the merits of the matter in view of our decision to set aside

the compromise decree in L.P.A. No. 121 of 2000. We give liberty to the Petitioner to file an Application to implead her as a party to the Letters

Patent Appeal.

34. We are therefore of the considered view that the Petitioners have made out a case for setting aside the compromise decree.

Final Disposition:

35. Accordingly, the compromise decree dated 17th March 2004 is set aside and L.P.A. No. 121 of 2000 is restored to file. The Registry is

directed to post the Letters Patent Appeal for hearing before the Division Bench as per roster. In the upshot, we allow the Review Petitions. No

costs. Consequently, connected Miscellaneous Petitions are closed.