

Packiyathai @ Packiyalakshmi Vs A. Ramachandrapandian and Others

Court: Madras High Court (Madurai Bench)

Date of Decision: Feb. 5, 2013

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 23 Rule 3, Order 23 Rule 3A
Legal Services Authorities Act, 1987 â€” Section 19

Citation: (2013) 3 LW 187

Hon'ble Judges: D. Hariparanthaman, J

Bench: Single Bench

Advocate: S.S. Thesigan, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

D. Hariparanthaman, J.

The petitioner herein has filed a suit before the District Munsif Court, Sivagiri, seeking to set aside the compromise

decree, dated 20.11.2011, in O.S. No. 163 of 2007, passed by the Mega Lok Adalat held at Tirunelveli, u/s 19 of the Legal Services Authorities

Act, 1987. O.S. No. 163 of 2007 was filed by the present petitioner and the respondents 2 and 3 against the respondents 4 and 7 herein i.e., in

O.S. No. 163 of 2007, the plaintiffs are the petitioner herein and the respondents 2 and 3, and the defendants are the respondents 4 and 7 herein.

2. The respondents 2 and 3 herein are none else than the sisters of the petitioner herein. That is, all the sisters joined together and have filed O.S.

No. 163 of 2007. The prayer in O.S. No. 163 of 2007 was declaration that the property mentioned in Schedule 1 and 2 belonged to the plaintiffs

in O.S. No. 163 of 2007.

3. The suit was compromised on 20.11.2011 before the Mega Lok Adalat held at Tirunelveli, u/s 19 of the Legal Services Authorities Act, 1987.

As per the compromise, the plaintiffs (the petitioner herein and the respondents 2 and 3) in O.S. No. 163 of 2007 received some money and

relinquished their rights in the properties mentioned in the Schedule to the suit.

4. In these circumstances, the petitioner has filed a suit to set aside the compromise decree on the ground that she did not sign in the plaint and in

the compromise agreement, based on which an award was passed by the Lok Adalat.

5. The suit was not numbered by the District Munsif Court, Sivagiri and the plaint was returned stating that the suit was hit by Order XXIII Rule

3A CPC. The present Civil Revision Petition is filed to set aside the docket order, dated 29.11.2012 in unnumbered O.S./2012 on the file of

District Munsif, Sivagiri, and for a direction to take the suit on file.

6. Heard the learned counsel for the petitioner. The learned District Munsif, Sivagiri, returned the plaint with the following endorsement:-

Order XXIII Rule 3A CPC specifically prohibits any challenge to a compromise decree on the ground it is unlawful by way of separate suit. To

state how the suit is maintainable. Authorities in this regard be cited.

7. Therefore, it is necessary to extract Order XXIII Rule 3A of the CPC hereunder:-

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.

8. Furthermore, the compromise itself is questioned on the ground of fraud, undue influence or coercive. In my view, the same cannot be hit by

Order XXIII Rule 3A of CPC if the compromise entered into itself is a fraudulent one and the same can be questioned by way of instituting a suit.

9. In this regard, the learned counsel for the petitioner relied on the judgment of the Karnataka High Court reported in S.G. Thimmappa Vs. T.

Anantha and Others, . Paragraph 10 of the said judgment is extracted hereunder:-

Where a compromise decree passed by a Court of competent jurisdiction contains a term which is opposed to law or public policy, and that

decree has not been set aside in proper proceedings, can that decree be pleaded as constituting estoppel by res judicata in a subsequent

proceedings between the same parties.

After examining several decisions of various High Courts, it was held that where a compromise decree passed by a competent jurisdiction contains

a term which is opposed to law or public policy and that decree has not been set aside in proper proceedings, it operates as res judicata in

subsequent proceedings between the same parties.

It is to give effect to this pronouncement that O. 23, R. 3A is enacted; in other words, the lawfulness of the decree cannot be agitated in a

subsequent suit. By lawful, it means it is not contrary to law, public policy or void ab initio, or lawful, but it cannot include the grounds like fraud,

undue influence, coercion, by which the decree can be avoided, treating it as voidable. Till it is avoided and displaced it can be treated as lawful for

the limited purpose of O.23, R. 3 C.P.C.

10. Further, in this regard, the learned counsel for the petitioner relied on a Calcutta High Court Judgment reported in AIR 1985 Calcutta 379

(Gosto Behari Pramanik v. Malati Sen), wherein in paragraph 12 it has been held as follows:-

It is well known that the consent or compromise decree can only be set aside in separate suit or proceedings on the ground that the consent was

obtained on the ground by fraud or coercion, and such consent or compromise decree resulted in serious and substantial injustice.

In view of the above, docket order, dated 29.11.2012 passed in unnumbered suit (O.S./2012) is set aside and the C.R.P. is allowed and the

learned District Munsif Court, Sivagiri is directed to take the suit on file. No costs. Consequently, connected miscellaneous petition is closed.