

CASE NO.:
Appeal (civil) 735 of 2008

PETITIONER:
S. RATNA

RESPONDENT:
SRI SRI SRI SHIVAKUMAR & ANOTHER

DATE OF JUDGMENT: 28/01/2008

BENCH:
P.P. NAOLEKAR & LOKESHWAR SINGH PANTA

JUDGMENT:
JUDGMENT

O R D E R

CIVIL APPEAL NO. 735 OF 2008
[ARISING OUT OF S.L.P.(C) NO. 17567 OF 2006]

1. Leave granted.

2. S. Jayanth and S.Reshma, son and daughter of appellant had filed a Suit being O.S. No. 350 of 1993 for partition of the suit property against their father P. Satyananda and grand-parents C.V. Chinnaiah and C.V. Parvathamma. During the pendency of the suit, S.Reshma-plaintiff and three defendants namely; P. Satyananda, Chinnaiah and Parvathamma expired. After the death of S. Reshma-plaintiff, her mother S. Ratna was brought on record as legal heir.

3. A compromise application was filed before the trial court by plaintiff-S.Jayanth and S.Ratna and in lieu thereof a compromise decree was passed on 30.9.2004. During the pendency of the suit, respondent No. 1 had filed an application under Order 1 Rule 10 of Code of Civil Procedure being Misc. Application No. 8 of 2002 in

the Original Suit for impleading him as a party defendant to the proceedings. The said application was rejected by the trial court by its order dated 3.3.2004. Respondent No. 1, instead of filing an appeal against the order of refusal to implead him as a party, preferred a first appeal under Section 96 of C.P.C. before the High Court challenging the compromise decree passed by the trial court on 30.9.2004. When the matter came up before the High Court, a memo is alleged to have been filed by the respondents in the appeal namely; S. Jayanth and S. Ratna stating that they had no objection to set aside the compromise decree dated 30.9.2004 and to implead respondent No. 1 as defendant in Original Suit No. 350 of 1993. Acting on that memo, the High Court by impugned order dated 9.8.2006 set aside the compromise decree without going into the merits or demerits of the case and remanded the matter to the trial court to proceed with the suit on merits after impleading respondent No. 1 as party to the suit. Aggrieved by the said order of the High Court, the present appeal has been filed.

4. It is submitted by learned counsel for the appellant that the appeal filed by the stranger to the proceedings without he being impleaded as a party was not maintainable at all. Apart from this, the compromise

decree dated 30.9.2004 between the parties, i.e. the appellant and respondent

No. 2 could not have been set aside only on the request made by one opposite party when the other opposite party had not made such a request for setting aside the compromise decree. It is well settled that the compromise decree can be set aside only on the joint prayer of the parties to the compromise and not on the basis of assertion or request to that effect by one of the parties. In pursuance of our order dated 15.1.2008, the appellant has produced before us the Memo of Consent filed before the High Court. From that Memo also, it is clear that the Memo was filed and signed by respondent No. 2 herein S. Jayanth (respondent No. 1 in the appeal before the High Court) and not by the appellant S. Ratna (respondent No. 2 in the appeal before the High Court). The High Court has committed an error in setting aside the compromise decree and remanding the matter to the trial court for hearing on the suit in accordance with law on its own merits.

5. We, therefore, set aside the impugned order of the High Court and remand the matter to the High Court to hear Regular First Appeal No. 1353 of 2004 afresh in

accordance with law. Appeal is, accordingly, allowed with costs of Rs. 10,000/- which shall be paid by respondent No. 1.