PETITIONER:
B.R. VEERABASAVARADHYA

Vs.

RESPONDENT:
THE DEVOTEES OF LINGADGUDI MUTT & ORS.

DATE OF JUDGMENT: 08/05/1996

BENCH:
K. RAMASWAMY, FAIZAN UDDIN, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

We have heard counsel on both sides.

It is not in dispute that in OS No.22/62 filed against five persons, there was a compromise by the appellant. The appellant was impleaded as first defendant. Pursuant to compromise memo dated June 7, 1972 filed under Order 23, Rule 3 CPC, the Court passed a decree in terms thereof. The clauses contained in the memo were that the appellant shall continue to be in occupation as Manager of the trust for its administration and the deities installed in the plaint schedule property. The two shops built by the appellant in the shrine were declared to be continued to be in his possession subject to his performing the worship in the same way as was done by his ancestors. The money deposited by him in OS No. 463/64 on the file of Second Additional Civil Judge, Bangalore City was agreed to be refunded to him and half the institution fee was also to be refunded. In furtherance thereof, the appeal was remanded to the trial Court for consideration of the matter afresh as against defendants 2 to 4. In furtherance thereof, the suit came to be dismissed. Again, a compromise memo was filed by defendants 2 to 4 in the High Court and the High Court in the impugned order dated January 25, 1993 made in RFA No.176/80 recorded the compromise as against defendants 2 to 4 and disposed of the matter in terms thereof. Thus this appeal by special leave.

Firstly, there is a difficulty in the way of the appellant for the reason that respondent 1(iii) and respondent 2 died and though steps were directed to be taken, no steps have been taken as against them. It would appear that counsel for the petitioner made an affidavit proposing to delete respondent 1(iii) and respondent 2 from the array of the parties. Even if we accept that stand, the problem will be whether the decree as compromised against defendants 2 to 4 could be set aside as against the appellant. it is seen that in the first instance the appellant had specifically compromised the matter in terms of the compromise memo which was recorded against him. The litigation thereby came to an end. When the matter was

remitted to the trial Court, it was confined vis-a-vis defendants 2 to 4. After the disposal of the suit by the trial Court, pending appeal, they came to compromise with the respondent and in terms thereof, the compromise decree came to be recorded in which the appellant cannot have any grievance in the matter as against him. The compromise decree referred to in the first instance would operate and he is bound thereby. The appeal, therefore, does not have any merit.

The appeal is accordingly dismissed. No costs.

JUDIS