

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2015

CORAM

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

S.A.No.1116 of 2008
and
M.P.Nos.1 and 2 of 2008
and
M.P.No.1 of 2011

Srimathi Vellaikanniyammal
alias @ Salai Govindhammal ... Appellant/Appellant/Defendant

-Vs-

M.C.Thanigachalam (Died) ... Respondent/Respondent
Madoore Veeraswamy Reddy (Died) ... Plaintiff
1.Dhanalakshmi
2.Muruganathan
3.Rambai
4.Shanmugapriya

Respondents 1 to 4 are the legal heirs of
M.C.Thanigachalam

5.Mangammal
6.Arumugham
7.Vadivelu
8.Palayanathan

Respondents 5 to 8 are the legal heirs of
Madoore Veeraswamy Reddy ... Respondents

Second Appeal filed under section 100 of C.P.C against the decree and judgment passed in A.S.No.92 of 1997 on the file of the Subordinate Judge Kancheepuram and in the Court of the Additional District Judge and Fast Track Court V, Thiruvallur dated 24.10.2007 confirming the decree and judgment passed in O.S.No.215 of 1985 on the file of District Munsif Court Thirutani, dated 23.07.1997.

For Appellant : Mr.J.Suresh

For Respondents : Mr.R.Rajesh
for R4 to R6

JUDGMENT

This second appeal is filed against the decree and judgment passed in A.S.No.92 of 1997 on the file of the Subordinate Judge Kancheepuram and in the Court of the Additional District Judge and Fast Track Court V, Thiruvallur dated 24.10.2007 confirming the decree and judgment passed in O.S.No.215 of 1985 on the file of District Munsif Court Thirutani, dated 23.07.1997.

2. This second appeal was referred for mediation to Tamil Nadu Mediation and Conciliation Centre, High Court, Madras.

3. A communication dated 10.03.2015 of the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras, enclosing a copy of its report dated 16.02.2015 has been received, wherein it is stated as follows:-

"Both the parties appeared before the Centre along with their Counsel. Matter has been settled between them as per the terms cited in the Memo of Compromise enclosed. Hence, the matter is referred back to the Hon'ble Court."

4. As the parties have arrived at a settlement in terms of the Mediation Agreement dated 16.02.2015, this second appeal is listed for passing of a judgment in terms of the Agreement.

5. The appellant/1st defendant and the legal heirs of the 1st plaintiff are impleaded herein as respondents 2 to 4 are present along with their learned counsel on record. Respondents 5 to 8, who are the legal heirs of the deceased 2nd defendant, are not parties in the Mediation and they have no claim over the property. The parties admitted the factum of the settlement and the terms of the settlement and agreed to have disposed of the second appeal in terms of the memo of compromise. The Mediation Agreement dated 16.02.2015, signed by the appellant and the respondents and their respective counsel reads as follows:-

"Both sides, out of their own volition and without any pressure or coercion from any side have agreed as follows:

a) Mrs.Vellaikanniyammal @ Salai Govindammal the appellant herein is the absolute owner of the suit property and have absolute title, interest and right over the suit property morefully described in the schedule hereunder. It is agreed, admitted and declared by the respondents 4, 5 and 6 that they or Late M.C.Thanigachalam or Late Dhanalakshmi do not have any right, interest or title over the suit property and only appellant herein is the absolute owner of the suit property.

b) Mrs.Vellaikanniyammal @ Salai Govindammal the appellant herein is in continuous absolute possession of the suit property without any interruption from 14.12.1973 when sale deed was executed in appellant's favor by Madoore Veeraswamy and absolute possession was handed over to the appellant. It is agreed, admitted and declared by the respondents herein that they or Late M.C.Thanigachalam or Late Dhanalakshmi did not have possession of the suit property at any point of time. Both appellant and respondents herein agree, admit that earlier absolute possession of the suit property was handed over to Madoore Veeraswamy on 05.06.1972 by Late M.C.Thanigachalam when the said M.C.Thanigachalam executed a Ex.B1 sale deed dated in favour of Madoore Veeraswamy.

c) The Sale Deed dated 05.06.1972 (Exhibit B1) executed by Late M.C.Thanigachalam the plaintiff in O.S. in favour of Late Madoore Veeraswamy the 2nd defendant in O.S. is for valid sale consideration and is not in nominal nature and it was not executed as security or as mortgage for the amount of Rs.5,000/- borrowed by the said M.C.Thanigachalam from the said Madoore Veeraswamy. The said Sale Deed dated 05.06.1972 is a legally valid sale deed binding upon the late M.C.Thanigachalam and also on his wife Late Dhanalakshmi and also on respondents herein. The said Sale Deed was acted upon by the Late Madoore veeraswamy and by the Late M.c.Thanigachalam and also by his wife Late Dahanalakshmi and also by respondents herein as valid sale deed.

d) The sale Deed dated 14.12.1973 (Exhibit B2) executed by the Late Madoore Veeraswamy in favour of Mrs. Vellaikanniyammal @ Salai Govindammal the appellant herein is a lawful and valid sale Deed for a valid and valuable sale consideration and it is binding on the Late M.c.Thanigachalam and also on his wife Late Dahanalakshmi and also on Respondents herein. The said sale deed is also binding upon the Late Madoore Veeraswamy and Respondents 5,6,7 and 8 in the Second Appeal who are the legal heirs of the said Late Madoore Veeraswamy.

e) The Late M.C.Thanigachalam or his wife Dhanalakshmi or respondents herein were not in possession of the suit property at any point of time. The absolute and continuous possession and enjoyment of the suit property by Mrs.Vellaikanniyammal @ Salai Govindammal the appellant herein is admitted by the respondents 4,5 and 6.

f) Both appellant herein and Respondents herein agree, admit and declare that Exhibit A4 dated 05.06.1972 which is allegedly a letter executed by Late Madoore Veeraswamy Reddy in favor of the Late M.C.Thanigachalam is a created, sham, null and void document which does not bind on the said Late Madoore Veeraswamy Reddy or on Mrs.Vellaikanniyammal @ Salai Govindammal the Appellant herein or on the Legal heirs of the Late Madoore Veeraswamy Reddy i.e., Respondents 5,6,7 and 8 in the Second Appeal.

g) Both appellant herein and respondents herein agree, admit and declare the exhibits A1 to A4 does not bind on the appellant herein and on the or on the legal heirs of Late Madoore Veeraswamy Reddy i.e., respondents 5, 6, 7 and 8 in the second appeal. The said exhibits do not confer any title, right, possession and interest over the suit property in favour of Late M.C.Thanigachalam and also on his wife late Dhanalakshmi and also on respondents herein.

h) Both appellant herein and respondents herein agree, admit and declare that the appellant is entitled to mutation of revenue records including patta and chitta and also entitled to pay all public dues and demands and respondents herein will make every endeavour to support the appellant on that aspect. Further it is agreed that the appellant's patta pass book dated 02.05.88 which is Exhibit B3 is a valid patta and binds on Late M.C.Thanigachalam and also on his wife Late Dhanalakshmi and also on respondents herein.

i) Respondents herein agree, admit and declare that the respondents and their successors herein will not disturb or interfere the peaceful possession and enjoyment of the suit property which is morefully described herein.

j) It is agreed that the Second Appeal shall be allowed on the above said terms and conditions and that judgment and decree dated 23.07.1997 passed in O.S.No.215 of 1985 on the file of the District Munsif Court at Thiruttani shall be set aside and the Judgment and Decree dated 24.10.2007 passed in A.S.No.92 of 1997 on the file of the Additional District Judge cum Fast Track Court No.V Thiruvallur shall be set aside.

k) The 1st respondent herein Murugananthagugan, received a sum of Rs.10,00,000/- (Rupees ten lakhs only)

vide cheque No.072566 drawn on HDFC Bank Arakkonam Branch from the appellant herein.

The 2nd respondent herein Rambai, received a sum of Rs.11,00,000/- (Rupees Eleven lakhs only) vide cheque No.072567 drawn on HDFC Bank Arakkonam Branch from the appellant herein.

The 3rd respondent herein Shanmughapriya, received a sum of Rs.11,00,000/- (Rupees Eleven lakhs only) vide cheque No.07265 drawn on HDFC Bank Arakkonam Branch from the appellant herein.

The above respondents received the said sums from the appellant for entering into this Memo of Compromise.

6. In terms of the settlement arrived at between the parties which is recorded in terms of the Mediation Agreement dated 16.02.2015 from the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras, this second appeal is disposed of recording the terms of Mediation Agreement. The terms of the Mediation Agreement and the report of the Mediation Centre shall form part of the judgment. No costs. Consequently, connected miscellaneous petitions are closed.

Xerox Copy of Joint Menu of Compromise is enclosed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsm

To

1. The Subordinate Judge,
Subordinate Court, Kancheepuram.
2. The Additional District Judge cum Fast Track Court V,
Thiruvallur.
3. The District Munsif Court, Thirutani.

+3cc's to Mr.J.Suresh, Advocate, S.R.No.14123

S.A.No.1116 of 2008

EV(CO)
CA(16/04/2015)