

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2015

CORAM

THE HON'BLE MR.JUSTICE B.RAJENDRAN

S.A.No.526 of 2013
and M.P.Nos.1 and 2 of 2013

1.B.Saroja

2.B.Venkatesan

3.B.Srinivasan ... Appellants/Defendants 1 to 3

Vs.

1.B.Lalitha

2.N.Parthiban

3.G.Ravichandraika

4.E.Sabitha

5.R.Hemalatha

6.P.Varalakshmi

7.R.Jayanthi ... Respondents/Plaintiffs

For Appellants : Mr.T.V.Krishnamachari

For Respondents : Mr.G.Ethirajulu
for Pitty.Parthasarathy
for second respondent

Second Appeal preferred against the judgment and decree passed in A.S.No.17 of 2012, dated 04.04.2013 on the file of the District Court, Nagapattinam, confirming the judgment and decree passed in O.S.No.55 of 2010, dated 08.08.2012 on the file of the Subordinate Court, Mayiladuthurai.

JUDGMENT

This Second Appeal was referred for mediation to Tamil Nadu Mediation and Conciliation Centre, High Court, Madras.

2. A communication dated 16.06.2015 of the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras, enclosing a copy of its report dated 26.03.2015 has been received, wherein it is stated as follows:-

"The parties appeared before the Centre along with their Counsel. Parties settled the matter amicably as per the terms cited in the Mediation Agreement and Memo of Compromise which are enclosed herewith. Hence the matter is sent back to the Hon'ble Court."

3.As the parties have arrived at a settlement in terms of the Memo of Compromise, dated 23.12.2014, this Second Appeal is listed for passing of an order in terms of the settlement.

4.The Memo of Compromise entered into between the appellants and respondents 1 and 2, signed by one B.Venkatesan, on behalf of the first appellant on the basis of the letter of authorisation given by the first appellant and other parties and their respective counsel reads as follows:-

"The respondents 1 and 2 herein filed a suit against the appellants 1 to 3 and the respondents 3 to 7 in O.S.No.55 of 2010 on the file of the Subordinate Judge, Mayiladuthurai, for recovery of possession or delivery of possession of the suit properties through court Amine to the plaintiffs with other reliefs. In the above suit the 2nd appellant herein filed a written statement claiming right over the properties and also pleaded that they are cultivating tenants in respect of the suit schedule mentioned properties. It is submitted that the trial court by its judgment and decree dated 08.08.2012 allowed the suit. It is pertinent to note that the respondents 3 to 7 herein remained exparte in the above suit. However aggrieved by the said judgment and decree dated 08.08.2012 the appellants herein filed an appeal in A.S.No.17 of 2012 and I.A.59 of 2012 on the file of the District Judge Nagapattinam for production of additional evidence. In the appeal also respondents 3 to 7 remained exparte. Therefore they have no right in the suit properties and the decree and judgment so far they are concerned become final. It is submitted that the Lower Appellate Court by its decree and judgment dated 04.04.2013 dismissed the appeal as well as the application. Aggrieved by the same the appellants herein filed the above Second Appeal.

Both the parties namely the appellants and the respondents 1 and 2 being close relatives after discussion decided the dispute to be resolved and settled the matter amicably through the mediation centre referred by the

Honourable High Court. Before the mediation centre they decided to settle the dispute and the terms of the compromise between the appellants and the respondents 1 and 2 is as follows:-

1. The appellants do hereby admit and accept that the respondents 1 and 2 are the absolute owners of the suit properties more particularly described in the plaint schedule which forms part of O.S.No.55 of 2010 on the file of Sub-ordinate Court, Mayiladuthurai.

2. The appellants do hereby admit and accept that they are not cultivating tenants or title holders as claimed by them in the suit in respect of the suit properties.

3. The respondents 1 and 2 herein as required by the appellants agreed to sell a portion of suit land in New T.S.No.2/1, corresponding to Old S.F.No.234/1 and New T.S.No.3/1 corresponding to Old S.F.No.235/1A an extent of 20 feet breadth and 336 feet length admeasuring an extent of 15.43 cents to the appellants to reach their property comprised in New T.S.No.3/2, corresponding to Old S.No.235/1B and the respondents 1 and 2 have accepted the same. The said portion is more particularly described as "ABCD" (Red-coloured) in the plan attached herewith. The appellants should put up fencing in their ABCD portion of the land and their portion at their own cost within 3 months from the date of execution of the Memo of compromise.

4. The respondents 1 and 2 did not claim any right over the pump-set and bore-well situated in the portion of aforesaid land and they have also agreed to execute necessary document to effect the transfer of the same in the name of the appellants.

5. The appellants herein as requested by the respondents 1 and 2 agreed to provide a portion of land comprised in New T.S.No.3/2 corresponding to S.No.235/1B belonging to the appellants more particularly described as "EFGH" (Green coloured an extent of 1.5 cents 113'6" x 5'8") on the eastern side as shown in the Plan attached herewith.

6. The Appellants state that the respondents 3 to 7 have no right in the land comprised in T.S.No.3/2 (Old S.No.235/1B) belongs to these appellants. However in the event of any claim being made by the respondents 3 to 7 in respect of the lands comprised in T.S.No.3/2 (Old S.No.235/1B) the appellants have agreed to retain this portion of 15 cents of land in the appellants' share given to respondents 1 and 2.

7. The respondents 1 and 2 have agreed to execute a sale deed in favour of the appellants in respect of the land admeasuring an extent of 15.43 cents comprised in New T.S.No.2/1 corresponding to Old S.F.No.234/1 and New T.S.No.3/1 corresponding to old S.No.235/1A. The appellants should bear all the registration charges as well as stamp duty towards the deed of sale.

8. The appellants have agreed to execute a sale deed in favour of the respondents 1 and 2 in respect of the land admeasuring an extent of 1.5 cent comprised in New T.S.No.3/2, corresponding to Old S.F.No.235/1B. The respondents 1 and 2 should bear all the registration as well as stamp duty towards the said sale deed. The parties hitherto undertake to produce the certified copy of the compromise decree and judgment to be passed in S.A.No.526 of 2013 on the file of the Honourable High Court, Madras before the Execution court in E.P.No.215/2012 on the file of the Additional Sub-Court, Mayiladuthurai and record the same.

9. Both the parties have taken possession of the respective properties on this day of execution of this Compromise Memo as per the plan attached therein and they are entitled to deal with the properties as their own from this day. Appellants' properties "ABCD", Respondents 1 and 2' property "BCFGIJ".

10. The appellants herein agreed to pay a sum of Rs.30,000/- towards income for use and occupation of the said properties to the respondents 1 and 2.

11. Both the parties agreed that the entire dispute between them is resolved and settled once for all and they have also taken possession of the respective properties as stated above on this day and they are entitled to enjoy the same with all right of alienation and encumbrance.

12. The parties herein agreed to register the sale deed before the competent authority in respect of the land more particularly described and marked as "ABCD" to the appellants and the land earmarked as "EFGH" to the respondents 1 and 2 respectively.

13. The plain attached along with this compromise memo would form part of the compromise decree in the above second appeal and it is binding on all the parties, their heirs and legal representatives. This compromise decree is executable in court of law.

14. The parties to the compromise memo state and declare that they have no other claim against each other in respect of the properties more particularly described in the plaint schedule which forms part of O.S.No.55 of 2010 on the file Sub-ordinate Court, Mayiladuthurai. Each of the parties to this compromise memo shall hereafter hold and enjoy the property so allotted in severally and freed and discharged from all claims and demand of the other thereto. The parties to this compromise memo herein have no manner of any right and interest in properties allotted to others so much so that each of the parties hereto is the sole and absolute owner in his/her right of the properties allotted to him/her. Appellants property A,B,C,D, Respondent 1, 2 property B,C,F,G,I,J as per plan annexed herewith.

The parties have entered into this Joint Memo of Compromise voluntarily, without any compulsion, undue influence and coercion.

The parties pray that this Hon'ble High Court may be pleased to record the aforesaid joint compromise memo and also the plan attached along with it and pass a decree and judgment in terms of the compromise entered between the parties herein above. "

5. In terms of settlement arrived at between the parties which is recorded under the Memo of Compromise by the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras, in its Report dated 26.03.2015, this Second Appeal is disposed of recording the Memo of Compromise. The Memo of Compromise and the report of the Mediation Centre shall form part of the decree. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar

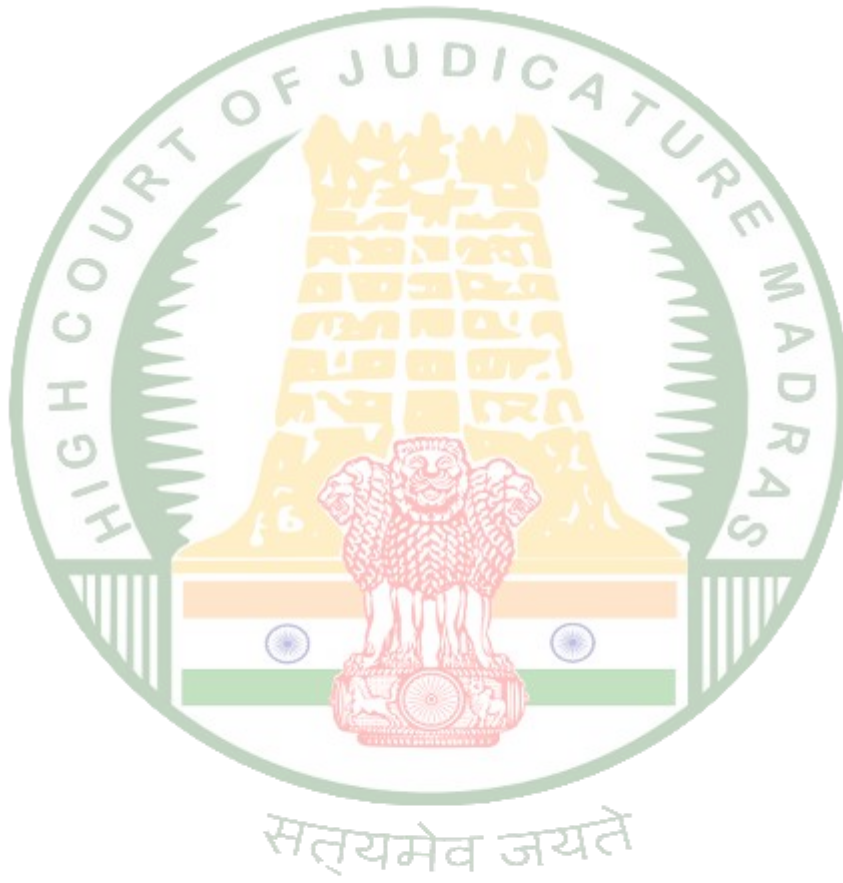
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Sub-Assistant Registrar

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To

1. The District Judge, Nagapattinam.
 2. The Subordinate Judge, Mayiladuthurai.
 3. The Section Officer, V.R.Section, High Court, Madras.
- + 1 cc to M/s.T.V.Krishnamachari, Advocate SR 31425



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