

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.12.2015

CORAM:

THE HON'BLE MR. JUSTICE S.NAGAMUTHU

Second Appeal Nos.700 and 701 of 2015
and
M.P.Nos.1 and 2 of 2015

Aarthiswari (since deceased)

1.G.Manikandan

2.Kumari

3.S.Soundararajan

4.S.Priyavardhini (Minor)

Rep. by her father

S Soundararajan

... Appellants in both
Appeals (Plaintiffs)

Vs

1.S.R.K.P.Srinivasan

2.Kavitha

3.Abirami

4.Baggiammal

5.Padmavathi

... Respondents (Defendants)

Prayer in S.A.No.700/2015: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment dated 03.09.2014 decreeing the Counter Claim of delivery of possession of the suit property passed in A.S.No.128/2012 on the file of the VI Additional City Civil Court, Chennai confirming the decree and judgment dated 19.01.2012 decreeing the Counter Claim of delivery of possession of suit property passed in O.S.No.4451/2006 on the file of 6th Assistant City Civil Court, Chennai.

Prayer in S.A.No.701/2015: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment dated 03.09.2014 passed in A.S.No.105/2012 on the file of the VI Additional City Civil Court, Chennai confirming the decree and judgment dated 19.01.2012 passed in O.S.No.4451/2006 on the file of 6th Assistant City Civil Court, Chennai.

For Appellants : Mr.S.V.Jayaraman, Sr.Counsel
in both appeals for Mr.T.Arulraj

For Respondents : Mr.V.Raghavachari
for M/s.Sampathkumar
Associates for R1 and R2

COMMON JUDGMENT

The suit in O.S.No.4451/2006 was filed by the appellants herein against the respondents for partition and also for permanent injunction to restrain the defendants 1 and 2 from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property. The first defendant in the suit Mr.S.R.K.P.Srinivasan made a Counter-Claim for recovery of possession of the suit property from the plaintiffs and for damages for use and occupation. The VI Assistant Judge, City Civil Court, Chennai, by a decree and judgment dated 19.01.2012 dismissed the suit, but decreed the Counter-Claim thereby directing the plaintiffs to deliver vacant possession of the suit property to the defendants 1 and 2 within three months i.e. on or before 18.03.2012. So far as the damages and future damages are concerned, the trial court dismissed the claim. As against the same, the appellants have filed an appeal in A.S.No.105/2012. As against the denial of the prayer for damages, the first defendant filed an appeal in A.S.No.128/2012. The lower appellate court, by a common judgment and decree dated 03.09.2012 dismissed both the appeals. As against the dismissal of A.S.No.105/2012, the appellants have come up with S.A.No.701 of 2005. As against certain conclusions arrived at by the lower appellate court in A.S.No.128/2012, the appellants have filed a separate appeal in S.A.No.700 of 2015. The defendants 1 and 2 have not filed any appeal against A.S.No.128/2012. That is how these second appeals are before this court for admission.

2. Today, when the matter was taken up, it is found that the appellants have filed M.P.No.2 of 2015 reporting compromise and requested the court to dispose of both the appeals in terms of the Compromise Memo. The appellants 1 to 3 are present before this court. Mr.S.Soundararajan, the father and natural guardian of the 4th appellant Minor Priyavardhini, is also present before this court. Their counsel is also present. They all said that they are the signatories to the Compromise Memo and the compromise is real. The first respondent is present along with his counsel. The first respondent and his counsel said that the compromise is real. From the enquiries made, I am satisfied that the compromise is real and voluntary and therefore, I am inclined to accept the Compromise Memo.

3. As per the terms of the compromise, today, in open court, in the presence of the respective counsel, the first respondent paid a sum of Rs.16,00,000/- (Rupees Sixteen Lakhs only) in cash to the appellants and the appellants have received the same. Similarly, the appellants have handed over the key of the suit property to the first respondent thereby handing over the vacant possession of the suit property to the first respondent. The first respondent has received the same in open court. It is stated by the appellants that they have already removed all their belongings from the suit property and by delivering the key of the suit property, they have delivered vacant possession of the suit property to the first respondent.

The same is recorded. In terms of the Compromise Memo, it is declared that the first respondent is the absolute owner of the suit property and since he has taken possession today, he can enjoy the suit property absolutely. The appellants have got no right whatsoever over the suit property and they have no claim over the suit property. The respondents 2 to 5 in the appeal have got no claim in the suit property.

4. So far as the court fee paid by the appellants in these two appeals is concerned, since the matter is compromised, the entire court fee is ordered to be refunded to the appellants. Though the decree is passed by this court, since the Legal Services Authorities Act provides that where the matter is compromised before the Lok Adalat, the parties are entitled to the refund of the court fee. Applying the same provision in these appeals, the Registry is directed to refund the court fees paid in these appeals to the appellants.

In the result,

i) M.P.No.2 of 2015 is allowed, both the second appeals are dismissed in terms of the Compromise Memo dated 09.12.2015. It is directed that the Compromise Memo shall form part of the decree. M.P.No.1 of 2015 is closed.

ii) It is declared that the first respondent Mr.S.R.K.P.Srinivasan shall be the absolute owner of the suit property and he shall enjoy the suit property absolutely, as he has taken delivery of the vacant possession today.

iii) The plaintiffs and the respondents 2 to 5 shall have no right whatsoever over the suit property.

iv) The Registry shall refund the entire amount paid as court fee in these two appeals to the appellants.

v) No costs.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

asr

To

1.The VI Additional Judge,
City Civil Court, Chennai

2.The VI Assistant Judge,
City Civil Court, Chennai

2 ccs to M/s. Sampath kumar & Associates, Sr. 66683

Second Appeal Nos.700
and 701 of 2015

SV (CO)

kk 5/4

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