

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.722 of 2013
and
M.P.Nos.2 and 3 of 2015

Ramasamy Udayar

... Appellant/Defendant

Vs.

Anabayan

....Respondent/Plaintiff

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the judgment and decree dated 31.08.2012 in A.S.No.59 of 2008 passed by the III Additional District Judge, Kallakurichi, confirming the Judgment and Decree in O.S.No.653 of 2002 dated 07.02.2006, on the file of the III Additional District Munsif, Kallakurichi.

For Appellant : Mr.C.Vediappan
For M/s.C.S.Associates

For Respondent : Mr.N.Manokaran

J U D G M E N T

The memo of compromise dated 01.04.2015 is filed by the parties jointly and they prayed for decree in terms of the above said compromise.

The Joint Memorandum of compromise reads as follows:-

"Joint Memorandum of Compromise filed by the parties to the Second Appeal under Order 23 Rule 1(1) of CPC

1.The Appellant and the respondent humbly beg to submit that the above appeal has been against the judgment and decree dated 31.08.2012 made in A.S.No.59 of 2008 passed by the learned Sub Court, Kallakurichi confirming the judgment and decree dated 07.02.2006 made in O.S.No.653 of 2002 on the file of the learned District Munsif Court, Kallakurichi.

2.The appellant/defendant had purchased an

extent of 28 cents (0.11.5 Ares) in R.S.Nos.69/12B, 69/12C and 69/12D and 14 cents (0.05.5 Ares) in R.S.No.69/14A and R.S.No.69/14C under a sale deed dated 26.03.1980.

3.The respondent/plaintiff had purchased an extent of 28 cents(0.11.5 Ares) in R.S.No.69/12A and 11 cents (0.04.5 Ares) in R.S.No.69/14D under a sale deed dated 01.04.2002.

4.The appellant and the respondent had purchased half share each in the well measuring 1 cent in R.S.No.69/14B under the respective sale deeds.

5.The Appellant and the respondent submit that the suit in O.S.No.653 of 2002 filed by the respondent/plaintiff for declaration of title and for permanent injunction was decreed on 07.02.2006. The appellant has filed A.S.No.59 of 2008 and it was also dismissed on 31.08.2012. Thereafter, the above second appeal has been filed before this Hon'ble Court.

6.The Appellant and the Respondent submit that taking into consideration of the fact that the matter relates to dispute between the neighbouring land owners, for their convenient enjoyment and at the instance of well wishers both have agreed to settle the dispute amicably by way of re-allotment of the suit properties.

6a) Pursuant to the negotiation held between the parties, the Joint memorandum of Compromise has been entered into which read as follows:-

i)It is agreed, confirmed and declared by and between the parties that the above suit properties measuring 82 cents comprised in R.S.Nos.69/12A, 69/12B, 69/12C, 69/12D, R.S.No.69/14A, 69/14C, 69/14B and 69/14D shall be measured by an Advocate Commissioner with the assistance of a qualified Surveyor so as to draw east to west boundary line from Palayam road and to carve out 41 cents on the northern part of the said east-west boundary line. The entire right and interest of the respondent/plaintiff in the well in R.S.No.69/14B shall stand relinquished in favour of the appellant/defendant upon the appellant handing over 5 stones used for bailing out water through bulls, and lying nearby the well.

ii)The respondent / plaintiff shall co-operate with the appellant/defendant as and

when required by the Surveyor/Advocate Commissioner for the demarcation of east-west boundary line to separate 41 cents on either side.

Iii) It is agreed, confirmed and declared by the and between the parties that the appellant/defendant will get right and title over 41 cents lying on the south of east-west boundary line to be drawn by Advocate Commissioner with the assistance of qualified Surveyor. Similarly, it is agreed and declared that the respondent/plaintiff will get right and title over 41 cents lying on the north of east-west boundary line to be drawn.

iv) The parties have, now, agreed to amicably resolve their dispute and differences and right over suit properties and it is hereby declared and undertaken by the parties in full and final settlement of all their claims and counter-claims between them in respect of the suit properties.

v) The parties hereby agree, confirm and undertake that the understanding arrived at between the parties herein as regards the suit properties as more particularly agreed under this joint memorandum of settlement shall be binding on both parties, their respective heirs and executors. The parties agree that neither party nor any of their heirs and executors shall challenge or raise any dispute, claim or objection of any nature or any other terms as contemplated and set out under the consent terms, either now or in the future.

vi) It is further agreed and declared that the above terms of settlement will come into effect soon after demarcation of east-west boundary line from Palayam road and on allotment of 41 cents on the north of east-west boundary line to the respondent/plaintiff, and on allotment of 41 cents on the south of east-west boundary line to the appellant/defendant."

It is, therefore, prayed that this Hon'ble Court may be pleased to record the above joint memorandum of settlement and pass a compromise decree in the above terms and pass such other suitable orders as this Hon'ble Court deems fit in the circumstance and thus render justice.

2. According to the compromise, for executing the same, a Commissioner was appointed for demarcation of the properties.

Both parties also filed memo to the effect that they accept the report and the plan drawn by the Advocate Commissioner along with the sketch prepared by the Surveyor. The memo of compromise is recorded.

3. There will be a decree in terms of the compromise and the report of the Commissioner along with sketch would form part of the decree. The Advocate Commissioner has filed a memo claiming a sum of Rs.20,000/- as additional remuneration. The same is ordered and the respondent is directed to bear the same.

4. Accordingly, the Second Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The III Additional District Judge,
Kallakurichi,
2. The III Additional District Munsiff,
Kallakurichi
3. The Section Officer,
V.R. Section,
High Court, Madras 104.

Copy To

Mr. K. Arangeswaran,
Pandukil Plaza,
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New No. 330 (Old No. 168)
Thambu Chetty Street,
Chennai 600 001.

+1cc to M/s. C.S. Associates, Advocate, S.R.No.31551
+1cc to Mr. N. Manoharan, Advocate, S.R.No.31856

S.A.No.722 of 2013

SAI (CO)
CA(27/07/2015)