

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2015

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THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

S.A.No.828 of 2013

and

M.P.No.1 of 2013 and M.P.No.2 of 2015

Arumugam

... Appellant/Plaintiff

Vs

1. Balan

2. Krishnan @ Ganesan

... Respondents/Defendants

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 28.02.2007 in A.S.No.3 of 2006 on the file of the Subordinate Judge, Tirupur in reversing the well considered judgment and decree dated 29.06.2005 made in O.S.No.109 of 1997 on the file of the District Munsif-cum-Judicial Magistrate, Avinashi, Tirupur District.

For Appellant : Mr.Ma.P.Thangavel
For 1st Respondent : Mr.M.V.Muralidharan
For 2nd respondent : Ex-parte

J U D G M E N T

The plaintiff in O.S.No.109 of 1997 on the file of the learned District Munsif-cum-Judicial Magistrate, Avinashi, Tirupur District is the appellant herein. The respondents are the defendants in the suit. The said suit was filed for permanent injunction to restrain the defendants from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The trial court, by decree and judgment dated 29.06.2005, decreed the suit as prayed for. As against the same, the 2nd defendant filed an appeal in A.S.No.3 of 2006. By decree and judgment dated 28.02.2007, the learned Subordinate Judge, Tirupur allowed the appeal, thereby setting aside the decree and judgment of the trial court and dismissed the suit. As against the same, the plaintiff is before this Court with this Second Appeal.

2. When this appeal was taken up today, the appellant has filed M.P.No.2 of 2015 under Order XXIII Rule 3 CPC seeking to record the compromise reached between the parties. A memo of joint compromise has also been filed. An affidavit has been filed jointly by the appellant and the 1st respondent herein wherein they have incorporated the terms of the compromise memo. In paragraph 6 of the said joint affidavit, they have stated as follows:

'6. It is further humbly submitted that pursuant to efforts taken by both counsel on records as well as the amicus curiae, the parties are agreed to settle their all disputes in the following manner and the same may be considered by this Hon'ble Court to pass suitable decree by declaring the entire 436 square feet of land belonging to plaintiff, as per Sec.23 of Civil Procedure Code, 1908.

i. To pass decree in S.A.No.828 of 2013 filed by the appellant/plaintiff, after paying a sum of Rs.1,25,000/- towards full and final amount to the 1st respondent/2nd defendant, within a period of 3 months from the date of order.

ii. Upon receiving the above said amount of Rs.1,25,000/- by the 1st respondent/2nd defendant, who is the subsequent purchaser, to give up his title or interest over the part of suit property in G.N.S.No.80 and 81/80, for an extent of 102 square feet out of 436 square feet to the appellant/plaintiff and the plaintiff is declared as owner of entire extent of 436 sq.ft. (i.e.) an extent of 333-1/3 or 334 sq.feet along with the 102 sq.feet.

iii. To withdraw the suit in O.S.No.430 of 2011 on the file of the District Munsif Court at Avinashi, filed by the 1st respondent/2nd defendant against the appellant/plaintiff.

iv. To file a quash petition or compound the offence petition by all the accused in C.C.No.41 of 2013, pending on the file of Hon'ble Judicial Magistrate at Avinashi, by impleading the Appellant also, who is the defacto complainant in crime No.137 of 2012, which was registered against the 2nd defendant/1st respondent herein along with his 5 family members.

v. It is agreed by both the parties that in future there will not be any quarrel or dispute with regard to the entire extent of 436 square feet in the grama natham survey No.80 & 81/80 in Door No.84 H, Srinivasapuram, 3rd Ward, Avinshai Kuspa & Town in Avinashi Village & Taluk at Tirupur District along with all amenities with service connection and building and road, etc.

vi. Now the parties are agreed to abide the above said terms and conditions without influence and compulsion and they signed in their own willingness.

Therefore, in the above said bonafide reasons and terms and conditions, now both the parties are willing to settle the matter before this Hon'ble Court. Unless the petition is allowed, both parties would be put into much hardship and irreparable loss, and on the other hand no prejudice would be caused against the 2nd respondent herein.

Therefore, in the above said bonafide reasons stated supra, it is most humbly prayed that this Hon'ble Court may be pleased to accept the terms and conditions mentioned above and to declare and decree the suit for an entire extent of 436 Sq.ft. in the grama natham survey No.80&81/80 in Door No.84 H, Srinivasapuram, 3rd Ward, Avinshai Kuspa & Town in Avinashi Village & Taluk at Tirupur District along with all amenities with service connection and building and road etc. is belonging to the plaintiff and pass suitable order as this Hon'ble Court may deem fit proper in the circumstances of the case and thus render justice.''

3. The compromise memo has been signed by the appellant and the 1st respondent as well as by two witnesses by name Senthil Velavan and B.Rajesh.

4. Today, the appellant and the 1st respondent are present before this Court. The 2nd respondent remained ex-parte throughout the proceedings and thus, he is not interested in the matter. The appellant, who is present before this Court, would submit that in terms of the compromise memo, a decree may be passed. The 1st respondent would also say the same. They also say that the said compromise is real. The learned counsel on either side would also say the same.

5. Having regard to the same and having gone through the memo of compromise filed before this Court and the affidavit filed by the appellant and the 1st respondent, I am satisfied that the compromise is real and therefore, I am inclined to accept the same and pass a decree in terms of the compromise memo.

6. In view of the all above, this Second Appeal is allowed; the decree and judgment of the lower appellate court is set aside and there shall be a decree in terms of the compromise memo dated 30.03.2015. The compromise memo shall form part of the decree. Consequently, connected Miscellaneous Petitions are also closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge, Tirupura.

2. The District Munsif-cum-Judicial Magistrate,
Avinashi, Tirupur District.

+ 1 cc to Ma.P. Thangavel, Advocate SR.18024

Copy to: The Section Officer,

(Record if any) VR Section, High Court, Madras.