



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Appeal Suit No.73 of 2002

and

C.M.P.Nos.9157 of 2002, 209 of 2008,
897 of 2009 and 196 of 2015

- 1.Govindarasu [deceased]
- 2.Rajaraman
- 3.Parthiban
- 4.Ramadoss
- 5.Tmt.Santha

[Appellants 2 to 4 recorded as the Legal Representatives of the deceased 1st appellant as per order of this court dated 10.08.2012 made A.S.No.73 of 2012 (memo dated 29.07.2012)]

... Appellants/Defendants
1,3 to 5 & 7

-Versus-

- 1.Thillavaradambal
- 2.Poomadhu
- 3.Padmavathi

... Respondents/Plaintiffs

This appeal suit is filed against the judgment and decree dated 07.03.2002 made in O.S.No.56 of 1995 by the learned Additional Subordinate Judge, Villupuram.

For Appellants : Mr.A.K.Kumarasamy for
Appellants 2 to 5

For Respondents : Mr.AR.L.Sundaresan, Senior counsel
for Mrs.AL.Ganthimathi for R1
Respondents 2 & 3 appeared in person

JUDGMENT

The appellants herein are the defendants 1 , 3 to 5 and 7; the respondents 1 and 2 are the plaintiffs and the 3rd respondent is the 6th defendant in O.S.No.56 of 1995 on the file of the learned I Additional Subordinate Judge, Villupuram. The 2nd defendant -



Pavunammal is no more and her legal representatives are already on record. This suit was filed seeking to pass a decree declaring [1] that the Will dated 30.12.1977 executed by one Mr.Kesava Kounder and registered as T.C.S.No.17 of 1977 in the Office of the Sub Registrar at Kandamangalam, Villupuram District; [2] that the second Will dated 28.12.1977 executed by Mrs.Chinnammal and registered as T.C.S No.18 of 1977 at the office of the Registrar, Kandamangalam, Villupuram District; [3] that the Will dated 01.09.1984 executed by and Mr.Kesava Kounder and registered as T.C.S.No.16 of 1984 at the Office of the Sub Registrar, Kandamangalam, Villupuram District; and [4] that the Will dated 01.09.1984 executed by Mr.Kesava Kounder and registered as T.C.S.No.17 of 1984 at the Office of the Sub Registrar, Kandamangalam, Villupuram District are void; and [5] to pass a preliminary decree for partition and separate possession by dividing the suit property into four equal shares by metes and bounds and to allot 2/4th shares to the plaintiffs 1 and 2 and also [6] to pass a final decree. There are 68 items of immovable properties, 4 items of insurance policies and 25 items of movable properties. The learned I Additional Subordinate Judge, Villupuram, by decree and judgement dated 07.03.2002, declared that Ex.B.1 Will dated 28.12.1977, Ex.B.2 Will dated 30.12.1977, Ex.B.3 Will dated 01.09.1984 and Ex.B.4 Will dated 01.09.1984 are void and granted preliminary decree for partition allotting 2/4th shares to the plaintiffs and also directed the defendants to pay a sum of Rs.25,000/- towards mesne profits. As against the same, the appellants/defendants 1, 3 to 5 and 7 are now before this court with this appeal.

2. The 1st appellant - Mr.Govindarasu is no more and the appellants 2 to 4 viz., (1) Mr.Rajaraman (2) Mr.Parthiban (3) Mr.Ramadosh, who are sons of the deceased 1st appellant, are recorded as the legal representatives of the deceased 1st appellant.

3. Now, the appellants 2 to 5 have filed a petition in C.M.P.No.196 of 2015 requesting this court to record the compromise annexed to the petition. In the affidavit filed in support of the said petition, the appellants 2 to 5 have stated that during pendency of the appeal, the dispute has been amicably settled between them and the respondents and the suit properties have been divided and allotted to the respective sharers as detailed in the joint memo of compromise filed along with the petition.

4. The appellants 2 to 5 are present before this court and they are represented by the learned counsel Mr.A.K.Kumaraswamy. On inquiries, the appellants 2 to 5 would confirm the compromise and they would request the court to dispose of the appeal in terms of the joint memo of compromise. The learned counsel for the appellants would also reiterate the same.

5. Similarly, the respondent No.1 is present in court and she is represented by her counsel. The respondents 2 and 3 appeared in person. The respondents 1 to 3 have affixed their left hand thumb



impression in the joint memo of compromise. On enquiry by this court, they also confirmed that the matter has been amicably settled and they are parties to the above compromise and therefore, according to them, the compromise memo may be recorded and that the decree of the trial court may be suitably modified. The learned counsel for the 1st respondent would also reiterate the same.

6. From the inquiries held in open court from the parties, from the affidavit filed in support of the petition and on going through the compromise memo and also considering the submissions made by the learned counsel on either side and the respondents 2 and 3, I am satisfied that the compromise is true. Accordingly, I am inclined to accept the compromise and to dispose of the appeal by modifying the decree of the trial court in terms of the joint memo of compromise.

7. In the result, the civil miscellaneous petition in C.M.P.No.196 of 2015 is allowed and the joint memo of compromise is accordingly recorded. In view of the compromise, the appeal in A.S.No.73 of 2002 is allowed in part and a decree is passed in terms of the joint memo of compromise dated 05.03.2015 appended to C.M.P.No.196 of 2015. Since parties have already taken their respective shares in the suit properties in terms of the joint memo of compromise, this decree shall be treated as final decree. The joint memo of compromise and the sketch annexed to the same, shall form part of this decree. Considering the facts and circumstances of the case, both parties are directed to bear their respective costs. Consequently, CMP Nos.9157 of 2002, 209 of 2008 and 897 of 2009 are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

kmk

To

1.The Additional Subordinate Judge, Villupuram.

+3 ccs to M/s.A.L.Gandhimathi Advocate sr.12472

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aa08/09/2015