

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2015

CORAM

THE HON'BLE MR.JUSTICE **B.RAJENDRAN**

C.S.No.664 of 2014

and

O.A.No.804 of 2014

Mohamed Farook
Mrs.Madharamma Gani

.. Plaintiffs

vs.

T.K.S.Saanthalingam

.. Defendant

Plaint under Order IV Rule 1 of Original Side Rules read with
Order VII Rule 1 of Civil Procedure Code.

For Plaintiffs : Mr.S.Ramesh

For Defendant : M/s.Norton and Grant.

J U D G M E N T

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

2. A communication dated 25.11.2015 of the Tamil Nadu
Mediation and Conciliation Centre, High Court, Madras, enclosing a
copy of its report dated 12.10.2015 has been received, wherein it is
stated as follows:-

"Both parties appeared before the Centre

along with their Counsel. Matter has been settled between them as per the terms cited in the Mediation Agreement enclosed. Hence the matter is sent back to the Hon'ble Court."

3. As the parties have arrived at a settlement in terms of the Mediation Agreement dated 12.10.2015, this suit is listed for passing of an order in terms of the settlement.

4. The Mediation Agreement dated 12.10.2015, signed by the parties and their respective counsel reads as follows:-

"Both sides, out of their own volition and without any pressure or coercion from any side have agreed as follows:

1. Both the parties state that the property at Old Door No.144, New No.136, Adam Sahib Street, Royapuram, Chennai-13, measuring an extent of 2667 sq. ft. was owned by one Mr. Ekambaram Nadar. The said Mr. Ekambaram Nadar settled the said property under the settlement deed during the year 1951 in favour of his daughter Mrs. Aparanjiammal. The said Mrs. Aparanjiammal died intestate on 8.7.1998 leaving behind her husband T.K. Saravanan, her sons T.K.S.Saanthalingam the defendant herein and T.S.Sachidanandam, T.S.Dinakaran, T.S.Nirmalanathan and Sister J. Kasthuri as her legal heirs. The said Aparanjiammal's husband T.K.Saravanan also died intestate on 1.12.2002 leaving behind the defendant and other

children namely T.S.Sachidanandam, T.S.Dinakaran, T.S.Nirmalanathan and daughter J. Kasthuri as the legal heirs.

2. The defendant and other children who are defendants' brothers and sister entered into a deed of partition agreement dated 13.11.2002 and decided to sell the property and divide the sale proceeds equally among themselves. In this reckoning the defendant herein filed two suits on the file of this Hon'ble High Court, Madras in C.S.No.415/2001 and C.S.No.111/2003 and a Preliminary Decree was passed in C.S.No.111/2003 on 11.7.2007. The suit in C.S.No.415 of 2001 is in respect of some other property and C.S.No.111 of 2003 is in respect of property in bearing Old Door No.144, New No.136, Adam Sahib Street, Royapuram, Chennai-13 measuring an extent of 2667 sq.ft., the defendant herein is entitled to 1/5th undivided share over the aforesaid property and the remaining parties are entitled to the remaining 4/5 shares and final decree is yet to be passed. The said suit C.S.No.111/2003 was transferred due to enhancement of pecuniary jurisdiction and now pending on the file of the VII Additional City Civil Court and re-numbered as O.S.No.12869/2010. The defendant's brothers and sister namely T.S.Sachidanandam, T.S.Dinakaran, T.S.Nirmalanathan and sister J. Kasthuri have approached

the plaintiffs to sell their 4/5th undivided share in respect of the above property and the sister J. Kasthuri also represented that she has lost the original title deeds namely the 3 sale deeds dated 30.1.1933 and one sale dated 16.2.1933 bearing Doc.No.190, 191, 192 and 325/1933 respectively and the Settlement Deed dated 13.11.1951 registered as Doc.No.3948/1951 during transit. The said J.Kasthuri had also represented that she had given a police complaint before the Royapuram Police in this regard and a Missing Certificate was issued dated 13.10.2011 to that effect that the original title deeds could not be traced out. The said brothers and sister of the defendant have also given paper publication dated 3.10.2011 to that effect that they are not in possession of the original title deeds to the aforesaid property.

3. The defendant's brothers and sister sold 4/5th undivided share and interest to the plaintiffs by a deed of sale dated 30.11.2011 for a valuable sale consideration which is registered as Doc.No.4232/2011 on the file of the Sub Registrar Office, Royapuram. The defendant's brothers and sister have also handed over the vacant possession of their shares in the property to the plaintiffs herein.

4. In the mean time, the defendant entered into an agreement dated 8.4.2012 for sale with the above plaintiffs

in terms of the agreement for sale, the defendant agreed to sell 1/5th undivided share over the property mentioned and another extent of 70 sq. ft. thereby totalling in all to 2737 sq. ft. in the schedule hereunder to the plaintiffs or their nominees for a total sale consideration of Rs.48,00,000/- (Rupees Forty Eight Lakhs only) free from all encumbrances. The defendant also agreed to get a power of attorney from his only son S. Karthik Raj to execute the sale deed at the time of execution of the registration of sale deed. The 2nd plaintiff paid an advance of Rs.8 Lakhs (Rupees Eight Lakhs only) by way of Cheque No.426023, dated 10.4.2012 drawn on Indian Overseas Bank, Royapuram Branch as advance in favour of the defendant.

5. The defendant had also agreed to take all steps to bring the schedule mentioned property free from all encumbrances and that he shall withdraw the suit with respect to partition therein in O.S.No.12869/2010 on the file of VII Additional City Civil Court, Chennai against the plaintiffs herein at the time of execution of the sale deed and the defendant had also handed over the vacant possession of the property.

6. In the suit O.S.No.12869 of 2010 filed by the defendant herein, he has not made the plaintiffs herein as parties. On coming to know the pendency of the said suit, the plaintiffs themselves filed a petition in I.A.No.16537 of

2012 to implead themselves as parties / defendants in the said suit and after contest, the said application was allowed by order dated 05.08.2013 and the plaintiffs herein were impleaded as parties / defendants in the said suit and the final decree proceedings is still pending. The plaintiffs have filed the present suit for specific performance & other reliefs. In the said suit the defendant also entered appearance and filed his written statement and the same is pending for adjudication.

7. At this juncture, the settlement talk between the plaintiffs and defendant took place. Finally, by March 2015, the compromise talk was finalised, whereby it was agreed that the plaintiffs shall pay a sum of Rs. 29,00,000/-(Rupees Twenty Nine Lakhs only), inclusive of the advance amount of Rs.8,00,000/- (Rupees Eight Lakhs only) (Cheque No.426023 dated 10.04.2012) for total sale consideration against the amount of Rs.48,00,000/-(Rupees Forty Eight Lakhs only) in the sale agreement dated 08.04.2012. However, that talk had been finalised only by the end of March 2015, it was agreed and the same was paid by the plaintiffs herein by way of Demand Drafts in the following manner,

(i) Both the parties agree that the total sale consideration of schedule mentioned property is Rs. 29,00,000/-(Rupees

Twenty Nine Lakhs only),

(ii) The plaintiffs have already paid an advance of Rs.8,00,000/- (Rupees Eight Lakhs only) by way of Cheque No.426023 dated 10.04.2012, drawn on Indian Overseas Bank, Royapuram Branch, to & in favour of the defendant herein.

(iii) On 24.04.2015 the Plaintiffs paid a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) by way of Demand Draft No. 870517 dated 22.04.2015 drawn on Karur Vysya Bank, Egmore Branch, to & in favour of the defendant herein.

(iv) On 08.09.2015 the Plaintiffs paid a sum of Rs.3,00,000/- (Rupees Three Lakhs only) by way of Demand Draft No. 317237 dated 08.09.2015 drawn on Indian Overseas Bank, Royapuram Branch, to & in favour of the defendant herein.

(v) On 30.09.2015 the Plaintiffs paid a sum of Rs.8,00,000/- (Rupees Eight Lakhs only) by way of Demand Draft No. 317313 dated 28.09.2015 drawn on Indian Overseas Bank, Royapuram Branch, to & in favour of the defendant herein.

(vi) Since the plaintiffs herein paid the entire sale consideration as agreed the defendant herein undertakes to withdraw the O.S.No.12869 of 2010 on the file of VII Addl. City Civil Court at Chennai, which was filed by the defendant

herein.

8. Pursuant to the above said Joint Memo of Compromise both the parties admit that the total sale consideration of the schedule mentioned properties is Rs. 29,00,000/-(Rupees Twenty Nine Lakhs only), and the defendant herein agrees and undertakes to execute sale deed in favour of the above said plaintiffs or their nominees , since the entire sale consideration was paid by the plaintiffs to the defendant herein.

9. The defendant undertakes to withdraw the suit (O.S.No.12869 of 2010 on the file of VII Addl. City Civil Court at Chennai) filed by him, as 'settled out of court' as against these plaintiffs alone, since the entire amount was received by him. The defendant undertakes to withdraw the said suit in respect of all reliefs except past mesne profit against his brothers and sister alone that too before 30.11.2011.

10. The defendant also undertakes and agrees to get a power of attorney from his only son S. Karthik Raj to execute Sale Deed at the time of execution of registration of sale deed.

11. The defendant also agrees that he had already

handed over the vacant possession to the plaintiffs herein and he will confirm the same at the time of executing the sale deed.

12. The present suit shall be ordered with the above said terms so as to settle the matter amicably without any further precipitation on either side.

13. The Plaintiffs hereby undertakes to withdraw the present suit and the defendant hereby undertakes to execute sale deed to and in favour of the plaintiffs or their nominees.

14. The parties herein have signed this Memo of compromise with their full knowledge and consent.

15. The parties herein are filing this Memo of Compromise to place the above terms of agreement before this Hon'ble Court and for passing suitable orders.

SCHEDULE OF PROPERTY

1/5th undivided share in the house, ground and premises bearing Old Door No.144, New No.136, Adam Sahib Street, Royapuram, Chennai – 600 013 in O.S.No.197, R.S.No.928/2, C.C.No.2148 measuring 79' 7 ½" x 33' 6" = 2667 sq. ft and another extent of 70 sq. ft. thereby totalling in all to 2737 sq. ft. (1/5th Undivided share is

603.4 Sq.Ft) and the entire extent bounded on the :

North by: Vaikunda Naicker House,
 South by: Sambandan's House
 East by: Adam Sahib Street
 West by: Arumuga Nadar's House

situate within the Royapuram Sub Registrar Office and
 within the Registration District of Chennai North."

5. In terms of settlement arrived at between the parties which is recorded under the Mediation Agreement by the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras in its Report dated 12.10.2015, this Civil Suit is disposed of recording the Mediation Agreement. The Mediation Agreement and the report of the Mediation Centre shall form part of this Judgment. Connected Original Application is also closed.

6. In view of the settlement arrived at between the parties, the plaintiffs are entitled to get back the full amount of Court fee as per Section 69-A of the Tamil Nadu Court-Fees and Suits Valuation (Amendment) Act, 2007 (T.N.Act No.44/2007), which provides that "where the Court refers the parties to the suit to any one of the modes of settlement of dispute referred to in Section 89 of the Code of Civil Procedure, 1908 (Central Act V of 1908), the plaintiffs shall be entitled

to a certificate from the Court authorising them to receive back the full amount of fee paid in respect of such plaint if the dispute referred by the Court is settled". Therefore, the plaintiffs are directed to obtain necessary authorization certificate from the Court in order to get back the full amount of the Court fee paid by them in respect of the suit.

7. Both parties, in view of the settlement arrived at between the parties and for the benevolent task taken up by the Mediation Centre, in settling the matter had volunteered to pay certain amount to the Mediation and Conciliation Centre, High Court, Madras. Both the plaintiffs and the defendants are volunteered to pay a sum of Rs.25,000/- [Rupees twenty Five thousand only] and the same shall be paid by them within a period of two weeks from the date of receipt of a copy of this order.

26.11.2015

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B.RAJENDRAN,J.,

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