

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

S.A.M.P.Nos.158 & 990 of 2015

&

S.A.No.709 of 2013

JUDGMENT:-

Second Appeal No.709 of 2013, under Section 100 of C.P.C., is filed by the appellants/unsuccessful defendants, assailing the decree and judgment dated 23.01.2013, of the learned II Additional District Judge (Fast Track Court), at Mahabubnagar, passed in A.S.No.70 of 2009, whereby, the learned II Additional District Judge, while dismissing the said appeal, had confirmed the decree and judgment dated 13.07.2009 of the learned II Additional Senior Civil Judge (Fast Track Court), Mahabubnagar, passed in O.S.No.123 of 2004.

2. S.A.M.P.No.158 of 2015 is filed by both the parties along with the memorandum of compromise, praying to record the compromise entered into between the parties and to allow the second appeal in terms of the compromise by setting aside the judgments of both the Courts below.

3. S.A.M.P.No.990 of 2015 is filed by both the parties requesting for permission to file fresh memorandum of compromise by delete clause No. (iii) from the earlier memorandum of compromise filed by both the parties and accordingly record the compromise in terms of the fresh memorandum of compromise.

4. When the matter is taken up for hearing, learned counsel for both the sides, defendants 5 to 10 and the plaintiff, who are present in the Court, have stated that the said parties, i.e., defendants 5 to 10 and the plaintiff have settled the matter amicably and that the terms of settlement are reduced into writing in the memorandum of compromise

dated 23.06.2015 filed before this Court along with S.A.M.P.No.990 of 2015. It is also represented that S.A.M.P.No.158 of 2015 is filed under Order XXIII Rule 3 read with Section 151 C.P.C., for recording the compromise.

5. I have heard the submissions of the learned counsel for defendants 5 to 10 and the learned counsel for the plaintiff and perused the material record. Earlier, a memorandum of compromise was filed along with S.A.M.P.No.158 of 2015 and in that memorandum of compromise, one of the terms, namely, term No. (iii) was not acceptable to the parties. Therefore, a fresh memorandum of compromise referred to *supra* dated 23.06.2015 is filed after deleting term No. (iii) of the earlier memorandum of compromise and confining the terms to the present terms of compromise in the memorandum of compromise dated 23.06.2015.

6. The plaintiff and defendants 5 to 10 are present before this Court and they have produced copies of documents showing their identity. They are also identified by their respective counsel. When examined by this Court, they have stated that they have compromised the matter and that the compromise was entered into with free will and consent and without any force from any quarter. The plaintiff, who is a retired Government employee, had stated that in view of the terms of compromise, the second appeal may be allowed by setting aside the decree and judgment of the Court below passed in A.S.No.70 of 2009 and consequently set aside the decree and judgment of the trial Court passed in O.S.No.123 of 2004 and dismiss the said suit without costs.

7. Since this Court is satisfied that the compromise was entered into by both the parties with free will and consent and without any force from any quarter and since the parties have admitted the terms of compromise before this Court, the compromise is recorded.

8. Accordingly, S.A.M.P.Nos.158 and 990 of 2015 are allowed and the second appeal is disposed of in terms of compromise by setting aside the decree and judgment in A.S.No.70 of 2009 of the Court below, wherein, the decree and judgment of the trial Court are confirmed. Consequently, the suit of the plaintiff in O.S.No.123 of 2004 on the file of the II Additional Senior Civil Judge (Fast Track Court), Mahabubnagar, is dismissed without costs.

There shall be no order as to costs. Miscellaneous petitions pending, if any, in this appeal shall stand dismissed.

M. Seetharama Murthi, J

24th June, 2015
Bvv