

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

S.A.No.1148 of 2006

and

CMP No.898 of 2016

S.Kumaresan

..Appellant/Plaintiff/
1st Respondent

Versus

1.K.Sakunthala

2.R.Vijayalakshmi

(Respondents 1 and 2 are
represented by Power Agent,
Mr.T.Krishnamurthy)

3.The Commissioner,
Coimbatore Municipal
Corporation,
Coimbatore - 641 001.

..1 to 3 Respondents/
3rd, 4th, 1st defendant/
1st & 2nd Appellant/2nd Respondent

4.Anbalagan

5.A.Devaraj

6.A.Bharathi

..4 to6 Respondents/Defendants 5to7/
Respondents 3 to 5

(Respondents 4 to 6 were impleaded vide
order of this Court dated 12.10.2015 made
in M.P.No.2 of 2015 in S.A.No.1148 of 2006)

Prayer: Appeal filed under Section 100 C.P.C., praying to set
aside the Judgment and Decree dated 28.7.2005 passed in
A.S.No.89 of 2004 on the file of the First Additional District
Judge, Coimbatore, reversing the Judgment and Decree dated
10.4.2003 passed in O.S.No.3993 of 1996 on the file of the
Second Additional District Munsif, Coimbatore, by allowing the
Second Appeal.

For Appellant	: Ms.P.V.Rajeswari
For respondents 1 & 2	: Mr.C.R.Prasanan
For 3 rd respondent	: No appearance
For Respondents 4to6	: Ms. Menjumatha (No appearance)
Respondents 4 to 6	: Appeared in person

JUDGMENT

This Memorandum of Appeal has been directed against the Judgment and Decree dated 28.7.2005 and made in the Appeal in A.S.No.89 of 2004 on the file of the First Additional District Judge, Coimbatore, reversing the Judgment and Decree dated 10.4.2003 and made in O.S.No.3993 of 1996 on the file of the II Additional District Munsif, Coimbatore.

2. The appellant is the plaintiff in the suit. The said suit was filed against the defendants/respondents herein for the relief of declaration directing the first defendant/Coimbatore Municipal Corporation, Coimbatore, to assign the suit property in the name of the plaintiff alone and not to the defendants 3 to 7 as user, enjoyer and possessor of the suit property. He had also sought for a consequential relief of injunction restraining the first defendant / Coimbatore Municipal Coimbatore or their men, in any way, assigning the property to anybody except to the plaintiff and not to the defendants 2 to 7. This suit was originally decreed by the Trial court as prayed for.

3. In the Appeal filed by the defendants, the Judgment of the Trial Court was reversed by allowing the Appeal.

4. Having been aggrieved by the reversal of the Judgment of the Trial Court by the First Appellate Court, now the plaintiff stands before this Court with this Second Appeal.

5. It is to be noted here that the respondents 4 to 6 have been impleaded in the Second Appeal in view of the order of this Court dated 12.10.2015 and made in M.P.No.2 of 2015.

6. When the Appeal came up for hearing Ms.P.V.Rajeswari, learned counsel appearing for the appellant as well as Mr.C.R.Prasanan, learned counsel appearing for the respondents 1 and 2, have jointly submitted that the dispute between the parties has been amicably settled between them as they have entered into a compromise and the memorandum of compromise has also been reduced into writing and accordingly, they have also filed a joint Memorandum of Compromise.

7. In order to give a quietus to the issues between the parties, the parties have agreed to have the matter settled on the following terms as stated in the Memorandum of Compromise:-

(a) The parties of the second part hereby agree for cancellation of the Agreement of Sale entered into by their Power Agent, Mr.Krishnamoorthy, in favour of Mr.Noor Mohammed in respect of the Schedule mentioned property.

(b) The parties of the second part agree for cancellation of the General Power of Attorney executed by them in favour of Mr.Krishnamoorthy, after the registered agreement executed by Mr.Krishnamoorthy in favour of Noor Mohammed is cancelled by necessary document.

(c) The parties of the second part and the parties of the third part have relinquished their right, title and interest, if any, over the Schedule mentioned property which is the subject matter of the Second Appeal in S.A.No.1148 of 2006 on the file of the Hon'ble High Court, Madras.

(d) The second among the parties of the second part, namely, Vijayalakshmi, declares and confirms that she had relinquished her right, title and interest, if any, over the Schedule mentioned property which is the subject matter of the Second Appeal in S.A.No.1148 of 2006 on the file of the Hon'ble High Court, Madras and also agrees not to make any claim in respect of the Schedule mentioned property under the Will executed by her mother, Mrs.Lakshmiammal, on 20.1.1997.

(e) The parties of the second part agree for transfer and assignment of the schedule mentioned property in favour of the party of the first part by the Coimbatore Municipal Corporation. This may be deleted. Instead the following may be added

(f) The parties of the second part and parties of the third part agree for transfer of allotment and execution of sale deed in respect of the property which is the subject matter of the present Second Appeal No.1148 of 2006, which is more fully described hereunder by the Corporation of Coimbatore, in favour of the party of the first part alone.

(g) The parties of the second part agree for setting aside the decree and judgment passed by the I Additional District Court, Coimbatore, in A.S.No.89 of 2004 on 28.7.2005 by giving their consent before the High Court, Madras in S.A.No.1148 of 2006 and

for allowing S.A.No.1148 of 2006 in terms of this Memorandum of Compromise.

(h) The parties to this Memorandum of Compromise agree to observe the terms and conditions of the Memorandum of Compromise in true letter and spirit.

(i) The parties to this Memorandum of Compromise declare that they have arrived at and signed this Memorandum of Compromise with their free will and volition and without any force, threat or coercion from any one.

8. Learned counsels Ms.P.V.Rajeswari and Mr.C.R.Prasanan have also submitted that the Second Appeal may be allowed in terms of the Memorandum of Compromise after setting aside the Judgment and Decree of the First Appellate Court viz., the First Additional District Court, Coimbatore, in A.S.No.89 of 2004 dated 28.7.2005.

9. Since the parties to the Second Appeal have come forward to settle the matter and subsequently, settled the dispute by entering into the compromise and the Memorandum of Compromise has also been reduced into writing, this Court is of the view that the Second Appeal may be allowed in terms of the Joint Memorandum of Compromise.

11. Accordingly, the Second Appeal is allowed in terms of the Memorandum of Compromise dated 10.10.2015 jointly filed by both the parties. Consequently, C.M.P.No.898 of 2016 is allowed. Memorandum of Compromise dated 10.10.2015 shall form part of the Decree. The Judgment and Decree dated 28.7.2005 and made in the Appeal in A.S.No.89 of 2004 on the file of the learned First Additional District Judge, Coimbatore, are set aside. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

asvm

To

1.The First Additional District Judge,
Coimbatore.

2. The II Additional District Munsif,
Coimbatore.

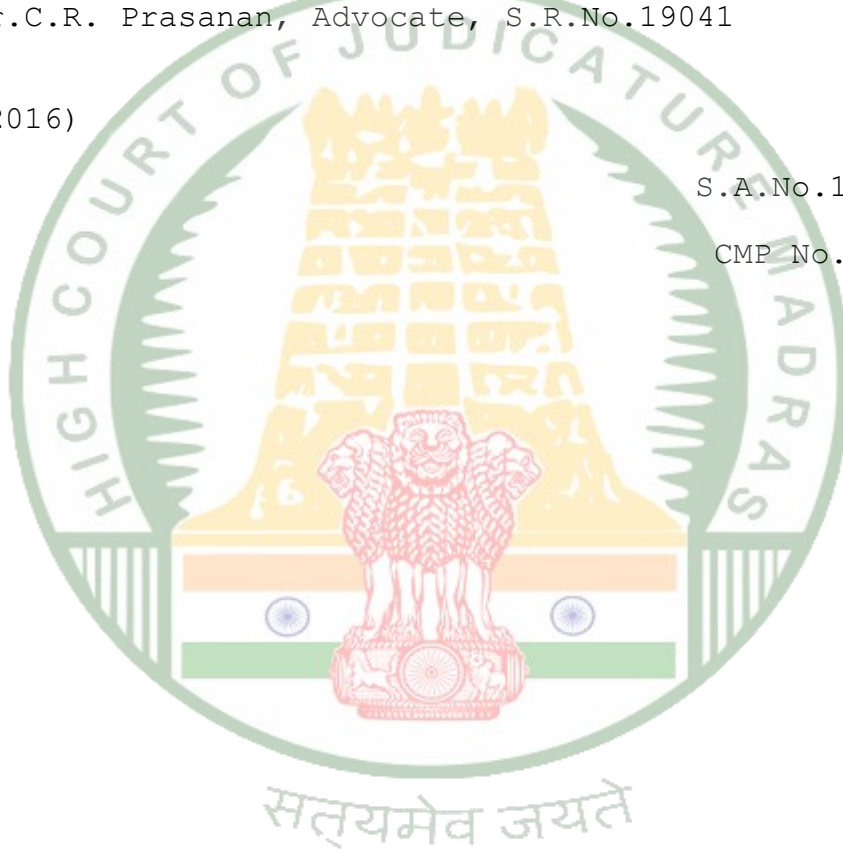
+2ccs to Mr.P.V. Rajeswari, Advocate, S.R.No.18939

+1cc to Mr.C.R. Prasanan, Advocate, S.R.No.19041

RS(CO)

EU(20/05/2016)

S.A.No.1148 of 2006
and
CMP No.898 of 2016



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