

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2016

CORAM:

THE HONOURABLE MR. **JUSTICE M.M. SUNDRESH**

C.S.No.500 of 2015

- 1 Smt.S.K.Sebastina Mary
W/o. Mr.J.Irudaya Arulselvam
D/o.Late Kanniah
Plot No.139 Phase III TNHB
(Near ICF Colony) Chennai-600 058.
- 2 Smt.S.K.Juliana Margaret
W/o. Mr.Joe D/o.Late Kanniah
No.99/42 K.C Garden 4th Street
Peravallur Chennai-600 082. Plaintiffs
- Vs
- 1 Mr.S.K.Parthibaraj
S/o.Late S.Kanniah
A-62 5th Street Periyar Nagar,
Chennai-600 082.
- 2 Smt.Rani Elizabeth
W/o.Mr.A.Francis D/o.Late Kanniah
No.2/13 Radial House
Anna Nagar West Ext.
Chennai-600 101.
- 3 Smt.Rejina Mary
W/o.Mr.M.Peter D/o. of Late Kanniah
No.2/6 Radial House
Anna Nagar West Ext.
Chennai-600 101.
- 4 Smt.Stella Mary
W/o. Mr.Anthony Raj D/o. of Late Kanniah
No.36 1st Main Road Kurinji Nagar Ext.
Lawspet Pondicherry 8.
- 5 Mr.S.K.Deva Arul
S/o. of Late S.Kanniah
A-62 5th Street, Periyar Nagar
Chennai-600 082.

6 Smt.S.K.Mary Pauline
 W/o. Mr.A.Singarayan D/o.Late Kanniah
 Pauline Illam Plot No.LIG ID 269 24th
 Cross Street Phase-I Nolambur
 Chennai-600 037. .. Defendants

Suit is filed under Order IV Rule 1 C.P.C Original Side Rules read with Order VII Rule 1 of C.P.C., seeking a judgment and decree for a preliminary decree for partition by the division of the suit properties morefully described hereunder into 8 shares by metes and bounds and such one share each to the plaintiffs hereunder; b) directing the defendants to pay to the plaintiffs a sum of Rs.10,000/- as mesne profit per month on receiving from Item no.1 property from the date of filing the plaint; c) permanent injunction restraining the defendants or his men, agent, servants or anyone under of through from in any manner alienating, mortgaging, encumbering the suit property in respect of plaintiffs share mentioned in the schedule hereunder and d) directing the defendants to pay costs of this suit to the plaintiff.

For plaintiffs : Ms.Dr.Gouri

For defendants : Mr.C.Ramesh for D1 & D5

Mr.P.Chandrasekar for D3, D4 & D6

No appearance for D2

JUDGMENT

The suit is filed by the sisters against their other sisters and brothers for partition and separate possession.

2. When the matter is taken up for hearing, the learned counsel appearing for the parties submitted that the matter has been compromised between the parties before the Tamil Nadu Mediation and Conciliation Centre as per the Joint Memo of compromise duly signed by the parties and also by respective counsel. Therefore, it is submitted that a compromise decree can be passed in terms of the memorandum of compromise. Accordingly, the following preliminary decree is passed by consent.

"1. WHEREAS, the party of the 3rd and 7th part, are in absolute possession and enjoyment of item 1 of the schedule of properties and with regard to item 2 of the schedule of properties, the same was kept vacant.

2. The party of the 1st & 2nd part had agreed to divide the item 1 & 2 of the plaint schedule property into 9 equal shares, out of which, the party of the 3rd part will be allotted 2/9th (i.e. extra share) of the schedule 1 mentioned property being the elder brother and the remaining 7 parts will be divided equally among the parties of the 1st, 2, 4 to 8th part. The Party of the 3rd Part had already executed a registered Release Deed

dated 26.09.2011 registered as Doc.No.4125 of 2011 on the file of SRO Sembiam in favour of party of the 7th part. Whereas the Party of the 3rd Part had agreed to cancel the release deed executed in favour of the 7th Part within 1 month from the date of signing this memorandum of compromise. Further if the party of the 3rd and 7th part fail to cancel the release deed dated 26.09.2011 registered as Doc.No.4125 of 2011 on the file of SRO Sembiam. The parties of the other part got every right to file a contempt for breach of compromise decree. Further the Parties of the other Part reserves their right to file necessary application to implement the contract as agreed by the Party of the 3rd and 7th Part in cancelling the Release Deed dated 26.09.2011 registered as Doc.No.4125 of 2011 on the file of SRO Sembiam.

3. The party of the 1st to 8th Part have agreed to identify the purchaser for the item 1 and 2 schedule mentioned properties within 12 months from the date of signing of this compromise memo and if any of the parties in this Memorandum of Compromise fail to comply with the same, the aggrieved parties will be automatically entitled to the reliefs as prayed in C.S.No.500 of 2015 on the file of High Court of Madras and will also be entitled to have independent

rights to deal with their respective shares and they are at liberty to file necessary petitions in order to execute the compromise decree.

4. The parties of the 1 to 8th part hereby agree and assure that the Item-1 and 2 schedule mentioned properties will be jointly sold at a better market price. The Parties in this Memorandum of Compromise assure that they will put their sincere efforts in identifying the buyer in a transparent manner. Further, if any properties are left out and if the same is discovered at a later point of time the same can be shared in the ratio of 2:9.

5. The parties of the 1st to 8th hereby agree to divide the shares in the following manner i.e. Party of the First Part 1/9 share, Second Part 1/9 share, Third Party 2/9 share, Fourth Party 1/9 share, Fifth Party 1/9 share, Sixth Party 1/9 share, Seventh Party 1/9 share and Eighth Party 1/9 share with regard to items 1 & 2 of the schedule mentioned properties by finding out the prospective purchasers in disposing the same in a joint manner.

6. All the parties to this Memorandum of Compromise hereby agree that if they are not able to identify the purchaser from the

date of signing this Memorandum of Compromise the aggrieved parties can approach the Hon'ble High Court by filing appropriate application for appointment of Advocate Commissioner to call for the tender for public auction of the Item-1 & 2 schedule mentioned properties. All the party to this Memorandum of Compromise hereby agree that accordingly to the entitlement of shares as agreed to this Memorandum of Compromise in connection with the sale of the schedule mentioned properties set out in the schedule herein.

7. All the parties shown in this Memorandum of Compromise hereby mutually agreed and expressed their consent voluntarily without any coercion and undue influence from any third party. All the parties entering this Memorandum of Compromise having willfully, and sound mind without having any compulsion from any 3rd parties.

8. The parties agree that the expenses to be incurred for commission and brokerage expenses if any shall be deducted out of the sale proceeds and the remaining amount shall be divided between them as mentioned in the clause above.

9. The parties agree that there shall be a decree in terms of this compromise and the parties shall bear their own costs in the suit."

3. Accordingly, preliminary decree is passed in terms of the memorandum of compromise, which shall form part of the decree. There will be no order as to costs.

sd/.M.M.S.J
18.08.2016

//Certified to be a true copy//

Dated this the day of 2016.

R.s/16.12.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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