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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2016

CORAM

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

C.S.No.850 of 2015

1.Sirajbhai Kikabhai  
2.Shabbirbhai Kikabhai  
3.Salimbhai Kikabhai  
4.Shafakatbhai Kikabhai  
5.Iqbalbhai Kikabhai ... Plaintiffs

Vs

1.Vijaykumar Jaiswal  
2.Deepmala Jaiswal ... Defendants

Plaint filed under Order VII Rule 1 of the Civil Procedure Code and Order IV Rule 1 of the Original Side Rules.

For Plaintiffs : Mr.K.C.Ramamurthy

For Defendants : Mr.S.Thankasivan

**JUDGMENT**

The suit has been filed for the following reliefs:

*(a) for a declaration that the windows and the ventilators in the ground floor, first floor and second floor of the building on Schedule A mentioned property have acquired the easementary rights of light and air, getting*

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*through the northern side of the defendants' B Schedule property;*

*(b) for a permanent injunction restraining the defendants, their servants, agents or anyone claiming to be acting under or for them, from proceeding with construction of the building on the Schedule B mentioned property without leaving sufficient space open to sky on the northern side of their building so as not to affect the easementary right of light and air through the windows and ventilators of the Schedule A mentioned property;*

*(c) pay the costs of the suit.*

2. When the matter is taken up for hearing, a joint memo of compromise duly signed by the parties and attested by their counsel, has been filed.

3. Learned counsel for the plaintiffs as well as the defendants submits that the suit may be decreed in terms of the joint memo of compromise dated 28.09.2016. The terms and conditions of the said joint memo of compromise read as under:

*"I. The defendants shall leave two open to sky OTS (OPEN TO SKY) as indicated in the plan annexed hereto in two places having a size of 1.1/2 feet x 4 feet and 3 feet x 14 feet*

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apart from 2 feet and 9 inches set back on the rear side of the defendants' building. The rear side setback is to be maintained 4 feet from above plaintiffs' ground floor roof.

II.The plaintiffs have accepted the above offer and hence the plaintiffs have decided to settle the suit claim.

III.Further the plaintiffs have agreed to remove the sun shade protruding inside the boundaries of the defendants. Further the plaintiffs have also agreed to make arrangements for opening of their windows towards inside of their property, which are presently being opened towards and inside the defendants' property. These alterations shall be made within 60 days from the date of completion of defendants' construction work.

IV.The plaintiffs further agree that the defendants shall be entitled to construct their building in the manner they desire after leaving the OTS as indicated in the sketch annexed hereto and neither the plaintiffs nor anybody representing them shall raise any objection or complaints whatsoever. They shall also withdraw the complaints made by them to the Corporation/CMDA authorities, if any.

V.The plaintiffs agree that as and when

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they demolish their existing building, the defendants are free to close the all OTS on their property or deal with the same in the manner they deem fit.

VI.The defendants should construct both OTS in such a manner that rain water does not enter the plaintiffs' property.

VII.The defendants also agree that the rear setback & the 2 OTS they have agreed to leave as per the sketch will continue throughout on the vertical level upto sky irrespective of number of floors they put up.

VIII.The defendants shall, during construction of their building take utmost care so as not to affect the plaintiffs' building, especially the temporary roof on the II Floor terrace, and if any damage occurs to the plaintiffs' building, the defendants undertake to repair the same at their own expenses.

X. Each party shall bear their own costs.

With the above understanding both the plaintiffs and the defendants have further agreed that they shall not have any further claim whatsoever against each other".

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4. Accordingly, the suit stands decreed in terms of the joint memo of compromise and the joint memo of compromise shall form part of the decree.

sd/.M.M.S.J

02.12.2016

//Certified to be a true copy//

Dated this the day of 2017

R.s/25.04.2017

COURT OFFICER

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



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