

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.01.2016

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1077 of 2013 and
M.P.Nos.1 & 2 of 2015 and
C.M.P.No.1251 of 2016

1.Ellappan
2.Annammal
3.Ravi
4.Anandan
5.Suguna

... Appellants/Defendants 2 to 5

vs.

1.Thanthoni Ammal
2.Kasi
3.Vijaya

... Respondents/Plaintiff/Defendants 1&7

Prayer:- This Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 05.06.2013 passed in A.S.No.36 of 2011 on the file of the learned Subordinate Judge, Poonamallee confirming the decree and judgment dated 11.10.2007 passed in O.S.No.467 of 1986 on the file of the learned District Munsif, Poonamallee.

For Appellants : Mr.R.Krishnaswamy

For R.1 : Mr.R.Davison

For R.2 : Given Up

For R.3 : Mrs.Vijaya, party-in-person present.

JUDGMENT

Today, it is represented by the learned counsel for the appellants that the appellants are giving up the second respondent herein. The learned counsel has also made an endorsement to that effect. The same is recorded. All the parties are present before this Court today.

2.The appellants are the defendants 2 to 6 in O.S.No.467 of 1986 on the file of the learned District Munsif, Poonamallee. The above suit was filed for declaration of title and for recovery of possession of the suit property and also for future damages @ Rs.3,000/- per annum from the date of plaint till the date of recovery of vacant possession of the suit property. The suit was vehemently contested by the defendants. By decree and

judgment dated 11.10.2007, the trial Court decreed the suit declaring that the plaintiff has got absolute title over the suit property and also for recovery of possession of the suit property from the defendants.

3. So far as the claim for future damages is concerned, the trial Court gave liberty to the plaintiff to file a separate petition under Order XX Rule 12 C.P.C. As against the same, the appellants herein filed an appeal in A.S.No.36 of 2011 on the file of the learned Subordinate Judge, Poonamallee. By decree and judgment dated 05.06.2013, the First Appellate Court dismissed the appeal thereby confirming the decree and judgment of the trial Court. Challenging the same, the appellants are before this Court with this second appeal.

4. I have heard the learned counsel for the appellants and the learned counsel for the respondents and I have also perused the records carefully.

5. Today, the appellants have filed C.M.P.No.1251 of 2016 before this Court under Order XXIII Rule 3 C.P.C., requesting the Court to dispose of the second appeal in terms of the compromise reached between the parties. The joint memo of compromise signed by the appellants and the respondents has been filed. As per the said terms of compromise memo, the suit property should be taken by the plaintiff as its absolute owner and the defendants have agreed to hand over vacant possession to the plaintiff. As per the further terms of compromise, the plaintiff has agreed to give up all her claims made in the suit properties in O.S.No.285 of 1994 on the file of the learned District Munsif, Poonamallee.

6. According to the parties, the said suit in O.S.No.285 of 1994 was filed by the plaintiff herein for partition and for separate allotment of her 1/3rd share. The suit was decreed. As against the same, an appeal has been filed in A.S.No.38 of 2015 on the file of the learned Subordinate Judge, Poonamallee and the same is pending.

7. Now, the appellants have agreed that the above appeal in A.S.No.38 of 2015 appeal may be allowed and the plaintiff has now agreed to give up all her so called rights over the suit properties in O.S.No.285 of 1994.

8. Today, when this Court enquired the parties, they agreed that the matter has been compromised in terms of the compromise memo and they have also submitted to this Court that this second appeal may be disposed of in terms of the said compromise memo. From the enquiries, I am satisfied that the compromise is real and therefore, the same needs to be accepted.

9. In view of the above, the second appeal is disposed of in the following terms:-

(i) C.M.P.No.1251 of 2016 in S.A.No.1077 of 2013 is allowed ;

(ii)The second appeal is disposed of in terms of the compromise memo and the decree and judgment of the trial Court confirmed by the First Appellate Court shall stand modified in terms of the above compromise memo.

(iii)The compromise memo shall form part of the decree.

There shall be no order as to cost. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Subordinate Judge,
Poonamallee.

2.The District Munsif,
Poonamallee.

+2 ccs to Mr.J.R.Davison, Advocate, sr.5529

+1 cc to Mr.R.Krishnasamy, Advocate, sr.5418

+1cc to Mr.R.Davison, Advocate, S.R.No.5530 (13.06.2016)

S.A.No.1077 of 2013

tej co
kra 17.03.2016

सत्यमेव जयते

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