

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE:8.2.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

S.A.No.1646 of 2011
and
M.P.No.1 of 2011 and C.M.P.No.883 of 2016

K.P.S.Krishnan ...Appellant/4th Defendant

Vs.

1.K.Elumalai Chetty Trust and Charities
represented by its Managing Trustee
K.Elumalai Chettiar
having office at Old No.25, New No.55
II Floor, Purasawalkam High Road,
Chennai-7. ... Plaintiff

2.Sri Venkateswara Litho Press
represented by its Managing Partner
S.P.Thaneermalai
New No.197, Old No.87, Swami Naicken Street
Chintadripet, Chennai-2.

3.S.P.Thaneermalai

4.P.Srinivasan ...Respondents /Defendants 1 to 3

Prayer : Second appeal is filed against the judgment and decree, dated 12.4.2011 and made in A.S.No.69 of 2010 on the file of VI Additional Judge, City Civil Court, Chennai, confirming the judgment and decree, dated 23.7.2009 and made in O.S.No.3092 of 2007 on the file of XVI Assistant Judge, City Civil Court, Chennai.

For Appellant : R. Palanisamy

For Respondents No.1: Mr.K.S.C.Sundaravadanam

JUDGMENT

When the second appeal is taken up for hearing today, the learned counsel appearing for the first respondent, who is the plaintiff in the suit in O.S.No.3092 of 2007, has submitted that the dispute between the parties has been settled in terms of memorandum of compromise that has been reduced into writing and signed by the first

respondent/plaintiff and the appellant, who is the contesting fourth defendant in the suit.

2.It is also obvious to note here that a petition in C.M.P.No.883of 2016 has been filed by the first respondent/plaintiff under Order 23 Rule 3 of C.P.C. seeking the leave of this Court to get the matter compromised and to record the memorandum of compromise entered into between the parties above named in the second appeal.

3.Heard Mr.R. Palanisamy, learned counsel appearing for the appellant/fourth defendant and Mr.K.S.C. Sundaravadanam, learned counsel appearing for the first respondent/plaintiff.

4.The memorandum of second appeal has been directed against the judgment and decree, dated 12.4.2011 and made in the appeal in A.S.No.69 of 2010 on the file of the VI Additional Judge, City Civil Court, Chennai, confirming the judgment and decree, dated 23.7.2009 and made in O.S.No.3092 of 2007 on the file of the XVI City Civil Court, Chennai.

5.The appellant herein is the fourth defendant in the suit, whereas the first respondent is the plaintiff and the respondents 2 to 4 are the defendants 1 to 3 in the suit.

6.It is manifested from the records that the first respondent/appellant had filed two suits in O.S.Nos.3091 and 3092 of 2007. Both the suits were filed against the appellant/D4 and other respondents for ejectment from the suit premises as they had committed wilful default in payment of rent and there was also huge arrears of rent.

7.Both the suits were consolidated together and a joint trial was conducted and ultimately, both the suits were decreed as prayed for.

8.Challenging the judgment and decree, dated 23.7.2009, the present appellant/fourth defendant had preferred a first appeal in A.S.No.69 of 2010 on the file of the VI Additional Judge, City Civil Court, Chennai.

9.It is significant to note here that no appeal is preferred against the judgment and decree passed in the suit in O.S.No.3091 of 2007. Therefore, the judgment and decree passed in the above suit has become final.

10.In so far as the first appeal in A.S.No.69 of 2010 is concerned, after hearing both sides, the learned XVI Assistant Judge had proceeded to dismiss the appeal

confirming the judgment and decree of the trial Court granting two months time for surrendering the vacant possession.

11. Having been aggrieved by the judgment and decree of the first appellate Court, dated 12.4.2011 and made in A.S.No.69 of 2010, the appellant therein, who is the fourth defendant, stands before this Court with this second appeal.

12. Admittedly, the appellant/D4 is now in possession of the portion of the suit property and in arrears of rent from April 2003 to July 2014, which comes to Rs.6,80,000/-.

13. Subsequent to the passing of the decree, but prior to the numbering of the second appeal, the first respondent/plaintiff had taken out execution proceedings in E.P.No.495 of 2010 for the execution of the decree, however, the same is pending on the file of the IX Assistant Judge, City Civil Court, Chennai.

14. Now, as it is revealed from the affidavit filed in support of the petition, which is filed under Order 23 Rule 3 of C.P.C., that the appellant/D4 has agreed to vacate the shop portion, provided the petitioner, who is the plaintiff waives the entire arrears of rent.

15. The first respondent/plaintiff has agreed to forego the arrears of rent provided the appellant/D4 vacates and handover the vacant possession of the demised premises on or before 29.2.2016.

16. It is also revealed from the records that another execution proceedings in E.P.No. 493 of 2010 is also pending on the file of the IX Assistant Judge, City Civil Court, Chennai. Before the said executing court, a memorandum of compromise was filed and the matter got compromised between the parties to the execution proceedings in respect of the suit in O.S.No.3091 of 2007 and the appellant/D4 has also agreed to vacate the premises and it is reported that the memorandum of compromise was also recorded in the aforesaid execution proceedings.

17. On coming to the instant case on hand, as afore stated, both the first respondent/plaintiff and the appellant/D4 have filed a memorandum of compromise, wherein, they have jointly stated as under:-

"3. The appellant agreed and accepted to vacate and hand over the vacant possession of the shop portion of the suit Schedule property

to the first respondent/plaintiff on or before 29.2.2016.

4.The first respondent also agreed to grant time for vacating the shop portion by the appellant on or before 29.2.2016 and also undertake to waive the entire arrears of rent as well as damages fixed by the first appellate court confirming the Judgment of the Trial Court.

5.It was agreed that if the appellant does not handover the vacant possession as agreed on 29.2.2016 then the first respondent/plaintiff is entitled to take possession through Court and is also entitled to claim arrears of the rent as well as damages from the appellant till the date of getting possession."

18.As it is seen from Clause 3 of the memorandum of compromise, the appellant being the fourth defendant in the suits has accepted to vacate and hand over the vacant possession of the shop portion of the suit Schedule property to the first respondent/plaintiff on or before 29.2.2016. The first respondent/plaintiff has also agreed to grant time for vacating the shop portion by the appellant on or before 29.2.2016 and also undertake to waive the entire arrears of rent as well as the damages fixed by the first appellate court confirming the judgment of the trial Court.

19.Both the parties have also agreed that if the appellant/D4 does not hand over the vacant possession on or before 29.2.2016 as agreed, then the first respondent/plaintiff is entitled to take possession through court and is also entitled to claim arrears of rent as well as the damages from the appellant/D4 till the date of getting possession.

20.Both the first respondent/plaintiff as well as the appellant/D4 were present.

21.Mr.R. Palanisamy, learned counsel appearing for the appellant and Mr.K.S.C. Sundaravadanam, learned counsel appearing for the first respondent were also present.

22.When enquired both the first respondent/plaintiff as well as the appellant/D4 have agreed to comply with the terms and conditions stipulated in the memorandum of compromise and also agreed to act upon the above said terms and conditions.

23.In so far as the respondents 2 to 4 are concerned, they have not contested the suit as well as the appeal, because the appellant/D4 alone has been in possession of the suit premises as on date and he has also agreed to vacate the premises on or before 29.2.2016.

24.Keeping in view of the above facts, the petition in C.M.P.No.883 of 2016, which is filed under Order 23 Rule 3 of C.P.C., is allowed recording the memorandum of compromise and the parties are permitted to get the matter compromised amicably.

25. In the above facts and circumstances of the case, the second appeal is disposed of in terms of the memorandum of compromise as the parties to the second appeal have settled their dispute amicably out of court.

Accordingly, the second appeal is disposed of in terms of the memo of compromise. The memorandum of compromise, dated 21.12.2015 is taken on record and it shall form part of the decree. However, there will be no order as to costs. M.P.No.1 of 2011 is closed and C.M.P.No.883 of 2016 is allowed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The VI Additional Judge, City Civil Court, Chennai.
2. The XVI Assistant Judge, City Civil Court, Chennai.

Copy to:

The Section Officer,
VR Section,
High Court, Madras.

+1 cc to Mr.R.Palanisamy, Advocate, sr.8217
+1 cc to Mr.K.S.C.Sundaravadanam, Advocate, sr.8183

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and M.P.No.1 of 2011 and C.M.P.No.883 of 2016

jsh co
kra 10.03.2016