

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

**Crl.OP No.4313 of 2015
and M.P. Nos.01 and 03 of 2015**

D.Balasingh Devadoss Petitioner

Vs

J.Ebenezer Sophia Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for records of Domestic Violence petition in Crl. M.P. No.2449 of 2014, pending trial on the file of the learned XVII M.M. Saidapet, Chennai and quash the same.

For Petitioner : Mr.V.Pavel
For Respondent : Mr.S.Ilamvaludhi

ORDER

This Criminal Original Petition has been filed under Section 482 Cr.P.C., to call for records of Domestic Violence petition in Crl. M.P. No.2449 of 2014, pending trial on the file of the learned XVII Metropolitan Magistrate Saidapet, Chennai and quash the same.

2.Heard, the learned counsel for the petitioner and the Learned counsel for the respondent

3.On 30.08.2016, this Court passed the following order :

" For the sake of convenience, the parties will be referred to by their name.

2. Today, both the parties viz., D.Balasingh Devadoss and J.Ebenezer Sophia and their respective counsel, are present before this Court.

3. D.Balasingh Devadoss got married to J.Ebenezer Sophia on 02.05.1989 and they have two children viz., Joel Devanand and Jacinth Devakiruba, through their wedlock. It appears that their matrimonial life ran into rough weather and they got estranged.

4. Admittedly, as on today, both Joel Devanand and Jacinth Devakiruba have attained the age of majority and are not minors.

5. It is seen that J.Ebenezer Sophia had purchased a property bearing Flat No.1, Pandian Palace, Sankarapuram Main Road, Choolaimedu, Chennai - 600 094 by availing bank loan from CanFin Homes Ltd., since J.Ebenezer Sophia is a bank employee. Balasingh Devadoss is a school Teacher working in the MCC Higher Secondary School, Chetpet, Chennai.

6. Dispute arose between Balasingh Devadoss and Ebenezer Sophia with regard to the aforesaid property, Pursuant to which, Balasingh Devadoss filed a civil suit in C.S.No.7 of 2015 before this Court for declaration that the suit house belongs to him. Ebenezer Sophia initiated proceedings in Crl.MP.No.2449 of 2014 against Balasingh Devadoss under the Domestic Violence Act before the XVII Metropolitan Magistrate, Saidapet, Chennai, challenging which, Balasingh Devadoss is before this Court.

7. In the meantime, the parties were referred to Mediation Centre, where, the parties have arrived at a amicable settlement, Pursuant to which, they have signed in the Mediation Agreement dated 09.06.2016 and the terms of which, is as follows:

" Both sides, out of their own volition and without any pressure or coercion from any side have agreed as follows:

1. The respondent herein has agreed that the I.D.O.P.No.326 of 2013 pending before the Hon'ble II Additional Family Court, Chennai and decided to file mutual consent Petition under section 10-A of the Divorce Act, 1869 at the time hearing on 22.06.2016.

2. The respondent submits that the present residential House stands in the name of the respondent/wife, to purchase the same, both the parties here to have come to a conclusion to sell the property and entire sale consideration after deducting the pending dues with the Bank in the name of the respondent, the proceeds may be deposit equally in the name of their children.

3. The respondent submits that the outstanding dues towards the Financial assistance to the bank shall be payable in the following manner; (Home Loan outstanding amount Rs.7,50,000/- (Rupees Seven Lakhs Fifty Thousand only).

4. On decided to sell, since the petitioner and his son are jointly residing in the said house, to make alternative arrangement for residence, the respondent herein/wife agrees and permit the petitioners to stay in the premises

for a period of 3 months. Further the respondent/wife herein agreed to pay half of the advance sale consideration amount that may be received by the respondent, immediately on the date of receipt of same to the petitioner.

5. The parties hereby mutually agreed that their son namely Joel Devanand will be in the custody of the petitioner and the daughter namely Jacinth Devakiruba will remain in the custody of the respondent.

6. The petitioner herein agrees to withdraw the Civil Suit in C.S.NO.7 of 2014 filed by the petitioner and pending before this Hon'ble Court on the date of order passed in the Mutual Consent Petition that may be agreed to file by the parties herein.

7. Based on the compromise arrived by both the parties, the pendency of all the cases respectively (1) IDOP.No.326 of 2013 both the parties have decided to file mutual consent petition under Section 10A of the Divorce Act, 1869 at the time hearing on 22.06.2016. Simultaneously the respondent also agreed to unconditionally withdraw the D.V.No.2449 of 2014, pending before the Metropolitan Magistrate Court, Chennai also.

8. It is agreed by both the parties in the presence of the conciliation officer that if the respondent enter into any sale agreement regarding the property must be transparent. It is also promised by the respondent that whatever amount received as advance for sale consideration nor the full amount in the presence of both the parties.

9. The respondent submits that the outstanding dues of Rs.7,50,000/- (Rupees Seven Lakhs Fifty Thousand only) will be deducted from the selling of the dwelling house and it is also record that the capital gain also will be calculated equally by both the parties.

10. Both the parties agreed that there are no further claims against each other."

Pursuant to the aforesaid agreement arrived at between the parties, today, both the learned counsel submitted that Balasingh Devadoss and Ebenezer Sophia have given their consent for the dissolution of their marriage in IDOP No.326 of 2013. Balasingh Devadoss has withdrawn C.S.No.7 of 2014.

8. Now, what remains is that Balasingh Devadoss should have to quit the aforesaid property and hand over vacant possession to Ebenezer Sophia, so that, she could take steps to sell the property and deposit the proceeds of the sale as agreed between them in the Mediation Report. The Mediation Report states that Balasingh Devadoss has agreed to hand over the vacant possession to Ebenezer Sophia within three months from 09.06.2016, which means that he should vacate and hand over the vacant possession before 09.09.2016.

9. The learned counsel for Balasingh Devadoss expressed apprehension that if Balasingh Devadoss hands over the possession to Ebenezer Sophia, she may enter into

the property and thwart the sale of the property and thereby, the agreement entered into in the Mediation Centre between the parties will stand scuttled.

10. To allay the apprehension, Ebenezer Sophia has filed a sworn affidavit , wherein, para - 9 states as follows;

"9. I respectfully submit that even after evicting from the premises by the petitioner I undertake and promise that I will not enter into the premises as directed by this Hon'ble High Court till the disposal of the property and I am ready to hand over the key of the house to anyone of the responsible persons as directed by the Hon'ble High Court and I assure that I will not deviate from the undertaking and if any violation of the condition it is prerogative of this Hon'ble High Court to proceed against me for contempt of Court."

In view of unequivocal undertaking given by Ebenezer Sophia as afore stated, this Court directs Balasingh Devadoss to hand over the vacant possession of the property to Ebenezer Sophia on or before 09.09.2016.

11. Ex consequenti, the proceedings in Crl.MP.No.2449 of 2014 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai, is hereby quashed.

For reporting compliance on 12.09.2016."

4.Today, when the matter came up for hearing, the learned counsel for J.Ebenezer Sophia/respondent submitted that D.Balasingh Devadoss/petitioner

has handed over the keys and vacant possession of the property in Choolaimedu as stated in para 8 above to the respondent on 07.09.2016. Recording the same, this petition is closed.

5. Consequently connected Miscellaneous Petitions are closed.

12.09.2016

vsi2/gms

To

1. The XVII Metropolitan Magistrate, Saidapet,
Chennai

2. The Public Prosecutor,
High Court, Madras – 104.

P.N. PRAKASH, J.

vsi2/gms

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12.09.2016