

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.09.2016

CORAM

THE HONOURABLE MRS. JUSTICE **PUSHPA SATHYANARAYANA**

C.S.No.447 of 2008

S.Suresh Plaintiff

Vs.

1. S.N.Viswam

2. V.Vijayalakshmi

3. The Chief General Manager,
The Muthalpet Benefit Fund Ltd
No.199, Thambu Chetty Street,
Chennai 600 001 ... Defendants

PRAYER: Plaint filed under Order IV Rule 1 of High Court O.S. Rules r/w. Order VII Rule 1 of C.P.C. praying for (a) directing the defendant and his men or the person claiming on behalf of the defendant to hand over the vacant possession of the suit property; b) to pay the damages at the rate of Rs.40,000/- per month from the date of the plaint to till the date of delivery of the suit property for illegal occupation and usage of property belongs to plaintiff and c) to award the cost of the suit.

For Plaintiff : Mr.V.Manhoar

For Defendants 1 and 2: Mr.Chandrasekar

For Defendant 3 : Given up

JUDGMENT

The suit was originally decreed ex-parte, which is for a recovery of possession of the suit property. Pursuant to the said decree, E.P.No.3760 of 2010 was filed and the possession is said to have been taken through Court. In the meanwhile, an application to set aside the ex-parte decree dated 17.09.2009 was filed with delay petition. The delay petition was dismissed. It was taken on appeal in O.S.A.No.177 of 2011 and the same was allowed by the Division Bench. Thereafter, the ex-parte decree was also set aside on 17.08.2011. At this stage, the plaintiff and the defendants 1 and 2 have entered into a compromise and filed the memorandum of compromise dated 21.09.2016, the terms of which are reduced into writing. The plaintiff and defendants 1 and 2 have signed in the Memorandum of Compromise and counter-signed by their respective counsels.

2. The terms of Memorandum of Compromise are recorded, which is as follows:

The parties to this suit namely the plaintiff and the defendants 1 and 2 resolved their differences in all

respect to give quiet to the pending issues on the terms stated herein:

1) The parties herein in pursuance to the mutual consensus arrived have agreed to restore the judgment and decree passed already in the above suit dated 17.09.2009 with regards to the direction to hand over the possession of the suit mentioned property notwithstanding the subsequent events in above suit however the plaintiff hereby not pressed the claim of compensation made in this suit due to mutual understanding.

2) The parties hereby having accepted to restore the eviction decree passed as early as on 17.09.2009 in order to meet the purposes of this suit the defendants 1 and 2 hereby acknowledge, endorse and accept the eviction enforced through the Execution Petition in E.P.No.3760 of 2010 on the file of this Hon'ble Court as valid, legal and confirm the possession taken by the plaintiff through the process of this Hon'ble Court as lawful without any reservation.

3) The defendants 1 and 2 and their

son Mr.Varun and Kannan who are the additional subscribed of their signature to this compromise memo collectively confirm and acknowledge the receipt of the articles, utensils, fixtures, fittings and furniture removed from the suit premises belongs to them and vouch that there is no further claim or left out materials to be received from and out of the process of the eviction made in E.P.No.3760 of 2010 on the file of this Hon'ble Court.

4) As there resolving of all the disputes and issues pending between the parties the defendants 1 and 2 hereby without any reservation or further claim hereby endorse the withdrawing of the suit in O.S.No.3077 of 2015 pending on the file of XVIII Additional Judge, City Civil Court filed in counter to the above suit to permit the derivation of comprehensive compromise in this suit in C.S.No.447 of 2008 on the file of this Hon'ble Court.

5) In the matter of resolving the entire impending issues between the parties including the person who subscribed in addition to the parties have agreed to pay

and receive the compensation of the sum of Rs.1,00,00,000/- (One crore only) to the defendants 1 and 2 to provide the solace and to settle themselves notwithstanding depend on the suit property so as the defendants 1 and 2 once for all without any reservation accepted to give up all kind of resistance, protest or defense in the above case to pave the way for the plaintiff to claim and enjoy the suit property as it is absolute to him without any encumbrance, charge or interest and litigation free.

6) The plaintiff hereby pay the sum of Rs.40,00,000/- (Rupees forty laksh only) by way of four different, distinct cheques as follows:-

1. The cheque bearing No.899731 drawn on the Indian Overseas Bank, M.M.D.A Nagar Branch Dated 10.09.2016 for the sum of Rs.10,00,000/- (Rupees ten lakhs only)

2. The cheque bearing No.000118 drawn on HDFC Bank dated 10.09.2009 for the sum of Rs.10,00,000/- (Rupees ten lakhs only)

3. The cheque bearing No.584737 drawn on Indian Overseas Bank, M.M.D.A. Colony

Branch, Dated 10.09.2016 (Rupees ten lakhs only).

4. The cheque bearing No.584738 drawn on Indian Overseas Bank, M.M.D.A.Colony Branch, dated 10.09.2016 (Rupees ten lakhs only).

The further sum of Rs.60,00,000/- (Rupees sixty lakhs only) being paid in cash to meet the urgent and immediate requirements of the defendants and their family including to meet creditors liabilities. Thereby the obligation of paying the compensation as agreed being fulfilled by the plaintiff and relieved of any further obligation or commitments which the defendants have acknowledge and relieve the plaintiff in all respect.

6) The defendants 1 and 2 and their sons present hereby acknowledged the absolute ownership right of the suit schedule property in favour of the plaintiff derived under the sale deed Dated 06.02.2008 registered as document No.376 of 2008 on the file of the S.R.O. Anna Nagar, Chennai and the peaceful enjoyment of the same by himself in all respect without any reservation or condition so as to permit the plaintiff to continue his development and

achieve other benefits derived out of the same.

7) In pursuance to this compromise, the defendants hereby give consent for the plaintiff to get return of the original documents presented before this Hon'ble Court in the above C.S.No.447 of 2008 forthwith.

8) The parties herein have come forward to resolve the issue on their own volition without any compulsion or coercion or on any other matter of inducement so as to express there could be no future claim in this regard in any other way or complaint.

3. Though the third defendant was originally added, the learned counsel for the plaintiff has given up the third defendant, as no relief has been sought for against the third defendant.

4. It is also stated that there is a civil suit pending on the file of the XVIII Additional Judge, City Civil Court in O.S.No.3077 of 2015 challenging the auction. As per the compromise, the said suit is also been withdrawn today.

5. In view of the memorandum of compromise arrived at between the parties, there will a decree in terms of the same. The above said terms of compromise are recorded. The memo of compromise shall form part of the decree. No costs.

Sd/P.S.N.J

21.09.2016

//Certified to be a true copy//
Dated this the day of 2017

R.s/28.01.2017

COURT OFFICER

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

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