

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2016

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.S.No.589 of 2007
and TOS No.20 of 2013 (O.P.No.183 of 2011)

C.S.No.589 of 2007

1.B.Radhabai
2.J.Mohanavalli

... Plaintiffs

Vs.

1.D.Sarala Devi
2.D.Senthil Kumar (Deceased)
3.D.Dakshinamurthy
4.S.Gajalakshmi
5.S.Sumathi
6.S.Thanigai Arasu
7.S.Prithiksha

... Defendants

[Defendants 6 & 7 represented by mother
and guardian 5th defendant Mrs.S.Sumathi]
[5th defendant Mrs.S.Sumathi appointed as
guardian for minor defendants 6 and 7 as
per order dated 26.11.2015 in Appln.Nos.
6402 to 6403 of 2015]

TOS.No.20 of 2013

1.D.Senthil Kumar (Deceased)

2.D.Dakshinamurthy

3.S.Gajalakshmi

4.S.Sumathi

5.Minor S.Thanigai Arasu

6.Minor S.Prithiksha

7.Sarala Devi

... Plaintiffs

[Plaintiffs 5 & 6 represented by mother
and guardian Mrs.S.Sumathi, 4th plaintiff]

[Plaintiffs 4 to 7 are brought to record on
L.Rs of 1st plaintiff (deceased) as per order
dated 29.01.2014 in Appln.No.417 of 2016]

Vs.

1.Radhabai

2.J.Mohanavalli

... Defendants

Prayer in CS.No.489 of 2007: Plaint under Order IV Rule 1 of O.S. Rules r/w. Order VII Rule 1 of C.P.C. praying to (a) pass an usual decree for partition and separate possession of the suit property by a preliminary decree declaring that the plaintiffs are entitled to 2/3rd share in the suit property and for separate possession of the same and if necessary by appointing an Advocate Commissioner to divide the property by metes and bounds and allot 2/3rd share in favour of the plaintiffs and for possession of the same by passing a final decree (b) direct the defendants to pay the plaintiffs a sum of Rs.67,800/- towards mesne profits and future mesne profits towards the share of the plaintiffs from the date of the suit till the date of realization (c) to direct the defendants to pay the plaintiffs the cost of the suit.

Prayer in TOS.No.20 of 2013 : Testamentary Original Suit (Conversion of OP.No.183 of 2011) was filed under Section 232 and 276 of the Indian Succession Act XXXIX of 1925 praying that the letters of Administration with Will annexed may be granted to them as grand children/legatee under the Will of the said deceased having effect limited to the Sate of Tamil Nadu.

For Plaintiffs : Mr.M.S.Subramanian
 (in CS.No.589 of 2007)
 For Defendants : Mrs.R.Shyamala
 (in CS.No.589 of 2007)
 For Plaintiffs : Mrs.R.Shyamala
 (in TOS.No.20 of 2013)
 For Defendants : Mr.M.S.Subramanian
 (in TOS No.20 of 2013)

JUDGMENT

The Civil Suit and Testamentary Original Suit are disposed of in terms of Memorandum of Compromise.

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

- 1) *The plaintiffs and defendants in C.S.No.589/2007 have agreed to divide the property as provided in the Will dated 30.03.2006 as shown in the plan annexed hereto.*

2) As per the Will dated 30.03.2006 and as per the agreement between the parties Mr.D.Dakshinamurthy, the 3rd defendant in C.S.No.589/2007 shall be entitled to 767 sq.ft of built up area in the ground floor which is marked in red colour in the plan together with 318 sq.ft. undivided share of land, as and towards his share.

3) The legal heirs of late D.Senthilkumar in C.S.No.589 of 2007 (the 2nd defendant) namely, his wife Mrs.S.Sumathi and minor son S.Thanigai Arasu and minor daughter S.Prithiksha. (Minor son and daughter represented by their mother who are defendants 5 to 7), shall be entitled to the built up area measuring 196 sq.ft. in the ground floor (which consists of 2 shop portion) together with 81 sq.ft. of undivided share of land which is marked in green and also 127 sq.ft. of built up area which consists of a shop (originally kept by G.Arumuga Chettiar for himself) together with 53 sq.ft. of undivided share of land, which is marked in dark blue in the plan. Any alienation of the minors' share shall be subject to the provisions of Section 8 of the Hindu Minority and Guardianship Act.

4) Mrs.S.Gajalakshmi the 4th defendant in C.S.No.589 /2007 shall be entitled to 840 sq.ft. of built up area in the first floor together with 374 sq.ft. undivided share of land, which is marked in purple colour in the plan.

5) Mrs.B.Radhabai, first plaintiff in C.S.No.589 of 2007 shall be entitled to 239 sq.ft. of built up area in the first floor together with 107 sq.ft. of undivided share of land, which is marked as in brown colour in the plan.

6) Mrs.J.Mohanavalli, the second plaintiff in C.S.No.589/2007 shall be entitled to 422 sq.ft. of built up area in the 2nd floor together with 247 sq.ft. of undivided share of land, which is marked in black colour in the plan.

7) the common area measuring 90 sq.ft. in the ground floor and the staircase in the common area of 101 sq.ft. which is marked in yellow colour shall be enjoyed commonly by all the parties. The rear terrace of 1218 sq.ft. in the 3rd floor is kept in common and shall be enjoyed by all the parties as common property.

8) The properties so allotted to the respective parties have been worked out by the parties and agreed that the total number of allotted share will be 11 of which Mrs.S.Gajalakshmi will have 3 1/2 share, Mr.D.Dakshinamurthy will have 3 1/4 share, Late D.Senthilkumar 1 1/2 share, the plaintiffs Mrs.B.Radhabai 1 share and Mrs.J.Mohanavalli 1 3/4 share. This exercise and sharing is agreed upon by the parties herein. The sum paid by the plaintiffs towards mortgage as well as house tax and water tax, paid by D.Dakshinamurthy and the electricity charges paid by Mrs.S.Gajalakshmi are being adjusted in the respective proportionate shares. The house tax and water tax paid by Mr.D.Dakshinamurthy comes to Rs.40,337/- and the electricity charges paid by Mrs.S.Gajalakshmi charges comes to Rs.56,160/- and in all a sum of Rs.96,497.00. The liability of the 1st plaintiff (in C.S.No.589/2007) i.e., Mrs.B.Radhabai comes to Rs.10,687/- and that of 2nd plaintiff (in C.S.No.589 of 2007) Mrs.J.Mohanavalli is Rs.13,437.25.

9) The total mortgage liability paid and discharged by the plaintiffs in C.S.No.589 of 2007 is

Rs.3,52,164.25. As per the proportionate share the mortgage liability of Mr.D.Dakshinamurthy is Rs.1,04,048.75 and that of Mrs.S.Gajalakshmi Rs.1,12,052.50 and that of Mr.D.Senthilkumar is Rs.48,022/- in all a sum of RS.2,64,122.25/- This amount is payable by the defendants in favour of the plaintiffs, as and towards the excess paid for mortgage liability by the plaintiffs. But the house tax, water tax and electricity consumption charges totally paid by the defendants come to Rs.96,496.50/- Out of this, the liability of the 1st plaintiff Mrs.B.Radhabai is Rs.10,687/- and that of 2nd plaintiff Mrs.J.Mohanavalli is Rs.13,437.25 and after adjusting the said sum of Rs.24,124.25 payable by the plaintiffs to the defendants, the net amount payable by the defendants to the plaintiffs comes to Rs.2,39,998/- which is rounded off to Rs.2,40,000/- which defendants have agreed to pay to the plaintiffs at the time of signing the compromise memo.

10) The total sum of Rs.2,40,000/- shall be paid to the plaintiffs in C.S.No.589/2007 (defendants in TOS.No.20/13) which payment shall be made individually to each of them at Rs.1,20,000/- (i.e.,

Mrs.B.Radhabai - Rs.1,20,000/- and Mrs.J.Mohanavalli Rs.1,20,000/- which payment shall be by way of cheques. The said Mrs.B.Radhabai and Mrs.J.Mohanavalli have agreed in full and final settlement, subject to the realization of cheques.

11) The plaintiffs hereby agree that the documents of title deeds deposited by the mortgage in the suit shall be taken return from the Court by the 3rd defendant, D.Dhakshinamurthy as substantial portions are allotted to the defendants and the third defendant in C.S.No.589/2007 D.Dhakshinamurthy hereby undertakes to produce the original documents for inspection as and when necessary by the plaintiffs or successors in interest.

12) The plaintiffs hereby agree that in full quit all claims they have together received sum of Rs.2,40,000/- as above and the portions hereby allotted to them in the above said house property, as per the plan attached herewith.

13) The parties hereby agree that the final decree may be passed in terms of this Compromise memo. The parties herein agree that there shall be no costs.

4. The above said terms of compromise is recorded.

5. As stated in Clause 11 of the Memo of Compromise, there was an order by this Court in Application No.3743 of 2011 directing the Madras Purasawakkam Hindu Janopakara Saswatha Nidhi, who is the mortgagee to deposit the document of title Nos.1 to 34 into this Court. Accordingly, it is stated that the documents are deposited in the above suit by the said Nidhi.

6. Registry is directed to hand over the said documents to D.Dakshinamurthy, the third defendant in the suit, who will have the custody of the documents and permit other sharers to peruse the same as and when required.

The Memorandum of Compromise along with the plans attached, will form part and parcel of the decree. No costs.

03.11.2016

ds

PUSHPA SATHYANARAYANA.J,

ds



C.S.No.589 of 2007 & TOS No.20 of 2013

WEB COPY

03.11.2016