

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2016

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.NO.964 OF 2007

1.R.Dhanalskmi
2.J.Vijayalakskini
3.R.Gajalakskmi

.. Plaintiffs

Versus

1.P.Suguna
(Amended as per order dated 21.09.2016
passed in Application No.4784/2016)

2.Shanmugaram
3.Shanmugapreetha
(D2 and D3 - amended as per order dated
21.09.2016 passed in Application No.
4785/2016)
(D2 and D3 declared as major and 1st defendant
discharged from guardianship as per order
dated 21.09.2016 in Application No.
4766/2016)

4.Padma
5.Ramya
6.Divya
7.Esakki Muthukumar
8.R.Jayabharathi

9.Sakthi Tiles
Represented by Mr.Thangaraj

10.Akbar Hydrabadi Briyani

11.Anand Park Beauty Parlour
Represented by R.Sundaram

12.City Tiffin Centre

13.National Photo Studio

14.Jupitar Cine Creations

15.Tasmac Wine Ship No.720

16.Kumar (Tasmac Bar Owner)

17.Boal Tas Geo Marine Consultants

18.Sun Cool Bar ... Defendants

PRAYER: Plaintiff filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 Civil Procedure Code praying for a judgment and decree against the defendants for the following:

a) For partition of the schedule mentioned property into six equal shares and allot $1/6^{\text{th}}$ share to the 1st plaintiff $1/6^{\text{th}}$ share the 2nd plaintiff and $1/6^{\text{th}}$ share to the 3rd plaintiff (in all $3/6^{\text{th}}$ share to the plaintiffs) taking into account all the facts pertaining to the location and value of the schedule mentioned property by appointing an Advocate Commissioner;

b) Directing the 1st defendant to render proper accounts of the rental collections from 17.03.2006;

c) For permanent injunction restraining the defendants 1 to 8, their agents, servants and men and everyone claiming under them or acting on their behalf from in any way alienating or encumbering the schedule mentioned property without giving the plaintiffs their $3/6^{\text{th}}$ share by metes and bounds;

d) For a permanent injunction restraining the defendants 9 to 18 from in any way paying monthly rents in respect of the tenanted portions in the suit property to the 1st defendant;

e) For a mandatory injunction directing the defendants 9 to 18 to deposit the monthly rent into the credit of the suit subject to further orders of the Court;

f) Directing the 1st defendant to pay costs of the suit.

For Plaintiffs : Mr.T.V.Ramanujam
 Senior Counsel
 for Mr.C.Jagadish

For Defendants 1-3 : Mr.G.Jeremiah

For Defendants 4-8 : Appeared in person

J U D G M E N T

The suit is filed by the plaintiffs against the defendants for partition of the schedule mentioned property into six equal shares and allot 1/6th share to the 1st plaintiff, 1/6th share to the 2nd plaintiff and 1/6th share to the 3rd plaintiff (in all 3/6th share to the plaintiffs) taking into account all the facts pertaining to the location and value of the schedule mentioned property by appointing an Advocate Commissioner; to direct the 1st defendant to render proper accounts of the rental collections from 17.03.2006; for permanent injunction restraining the defendants 1 to 8, their agents, servants and men and everyone claiming under them or acting on their behalf from in any way alienating or encumbering the schedule mentioned property without giving the plaintiffs their 3/6th share by metes and bounds; for permanent injunction

restraining the defendants 9 to 18 from in any way paying monthly rents in respect of the tenanted portions in the suit property to the 1st defendant; for a mandatory injunction directing the defendants 9 to 18 to deposit the monthly rent into the credit of the suit subject to further orders of the Court and to direct the 1st defendant to pay costs of the suit.

2. The plaintiffs and the defendants 1 to 8 have settled the matter amicably between them and entered into a joint memo of compromise dated 21.09.2016. The other defendants viz., 9 to 18 are only tenants and they are given up by the plaintiffs. Hence, they have not signed the joint memo of compromise. The parties, namely, the plaintiffs 1 to 3 and defendants 1 to 8 were personally present before this Court with their respective counsels. After ascertaining their consent, the joint memo of compromise is recorded. The joint memo of compromise reads as follows:

**"JOINT COMPROMISE MEMO FILED BY THE
PLAINTIFFS AND THE DEFENDANTS 1 TO 8**

The plaintiffs filed the above suit for partition and other reliefs. The defendants 1 to 8 are the co-sharers. The plaintiffs and the 8th defendant are entitled to 1/6th share and the defendants 1 to 3 together entitled to 1/6th share each and the defendants 4 to 7

together entitled to 1/6th share in the suit property left behind by the mother, Mrs. Shanmugakani Ammal. Now at the intervention of well-wishers and elders, and to avoid waste of time and money in the litigation and to purchase peace and harmony in the family, the parties have arrived at amicable settlement to settle their dispute over the family properties in the following terms: -

1. The plaintiffs and the defendants 1 to 8 have decided to sell the property described in schedule "A" hereunder as it were in condition along with the tenants and out of the sale proceeds the plaintiffs and the 8th defendant together will take 50% and the defendants 1 to 3 together will take the remaining 50% of the sale proceeds. The plaintiffs and the defendants 1 to 8 have agreed to join together in the execution of the proposed sale deed to sell the schedule "A" mentioned property and the purchaser will take care of the tenants in the property.

2. In consideration of the same, the defendants 4 to 7 are allotted the property more fully described in schedule "B" hereunder. The plaintiffs and the defendants 1 to 3 and 8 relinquish their respective rights in "B" schedule property and the defendants 4 to 7

will become the absolute owners of the same. The defendants 1 to 3 are allotted the properties more fully described in schedule "C" hereunder. The plaintiffs and the defendants 4 to 8 relinquish their respective rights in "C" Schedule property and the defendants 1 to 3 will become the absolute owners of the same.

3. In consideration of the same, the defendants 1 to 8 have no objection for the plaintiffs to withdraw the amount lying in the credit of the suit.

4. The defendants 2 and 3 who were minors at the time of filing the suit, now attained majority and they are entitled to represent on their own and they are declared as majors after discharging their guardianship.

5. The parties hereby agreed regarding the other properties left behind by the father, S.N.Muthu Nadar. The plaintiffs and the 8th defendant give up their right in the properties left behind by the father more fully described in "B" and "C" schedules hereunder. This compromise covers both the suit properties and other properties left behind by the father, S.N.Muthu Nadar. This settles the entire

dispute among the parties in respect of the family properties. Each party will have no claim against each other.

6.The suit may be decreed in terms of the above compromise. The terms of the above compromise shall form part of the decree.

7.The defendants 9 to 18, who were made as parties to the suit being the tenants in the suit property for effective adjudication, are hereby given up in view of this compromise entered between the sharers.

SCHEDULE "A"

All the piece and parcel of the land together with buildings erected thereon with eastern side compound wall situate in No.176, Kodambakkam Village, Madras, forming part of R.S.Nos.1 and 2 Patta No. C 63 and C 64, S.No. 1/3 and 2/5, 111 Kodambakkam being Plot No.2, of L.A.No.35 of 1958 Door No.128, Arcot Road, and the backyard bearing Door No.1, V.O.C. Street, Kodambakkam (as shown in the property Register) measuring North to South on eastern side 183 feet, Western Side 170 feet, East to West on the Northern side 56 feet and Southern side 50 feet about 3 grounds, 2155 sq. feet, bounded on the North by Arcot

Road, on the east Plot No.3, belonging to Sri.V.Arunachala Nadar, on the south by Plot No.7, belonging to Sri.S.Selvaraj and on the west by Plot No.1 belonging to Ram Theatre in the Registration Sub-District of Theagaraya Nagar and in the Registration District of Madras – Chingalput.

SCHEDULE "B"

Item No.(i)

The premises being the land admeasuring 3,052 square feet with the building thereupon bearing New Door No.167/79 (Old) Old Door No.11-B/3, Eldams Road, Teynampet, Chennai – 600 018, R.S.No.1512/9 (Part), the land being bounded on the,

North by : Eldams Road

South : Anand Apartment

East by : Property belonging to Mr.I.M. Srinivasan

West by : Property belonging to Mr.Ranga Ramanujam

Admeasuring

North to South on the Eastern side : 65 feet

North to South on the Western side : 63 ½ feet

East to West on the Northern & Southern side : 48 feet

Item No.(ii).

The premises being the land admeasuring 1843.75 square feet, with the building thereupon bearing new door No.173/82 (Old), Eldams Road, Teynampet, Chennai – 600 018, comprised in old survey no.959-A, R.S.No.1512/5 the land being bounded on the, measuring

North by : Eldams Road

South by : Mudaliyandan Garden

East by : House belonging to Vadivel Devar and

West by : House belonging to Ethirajulu Naidu, and

Admeasuring

North to South on the Eastern & Western side : 62 ½ feet

East to West on the Northern & Southern side : 29 ½ feet

Both item Nos (A) and (B) herein above, lying within Sub-Registration District of Teynampet Joint I and Registration District of Chennai – Central.

Item No.(iii).

The vacant land admeasuring one (01) cent in South Street, Lakshmina Nagar, Arumuganeri, Thiruchendur Taluk, Tuticorin District, in survey no.206/2 (Part) lying within Sub – Registration District of Kayalpatinam and Registration District of Tuticorin bounded on the

North by : Street
South by : Land belongs to Sammuvel Nadar
East by : Pattani Nadar property
West by : Land belongs to P.Ashok Raj

SCHEDULE "C"

Item No.(i):-

The land admeasuring 09 cents out of 24 cents and the building thereupon situated on L.F. Road, Arumuganeri, Thiruchendur Taluk, Tuticorin District Comprised in Survey No.207/18B-1D, the land being bounded on the,

North by : Land belonging to Muthu Nadar
South by : Property mentioned in item No.(ii) herein below
East by : Road
West by : Land belonging to Paramasakthi Ammal, and Admeasuring

North to South on the Eastern & Western side : 74 Links

East to West on the Northern Side : 104 Links and

East to West on the Southern Side : 140 Links

Item No.(ii):-

The land admeasuring 08 cents out of 24 cents and the

building thereupon situated on L.F. Road, Arumuganeri, Thiruchendur Taluk, Tuticorin District Comprised in Survey No.207/18B-1D, the land being bounded on the,

North by: Property mentioned in item No.(i) herein above

South by: Property belonging to Solomon Nadar and Shanmugham Thondaiman

East by: Road

West by: Land belonging to Paramasakthi Ammal, and Admeasuring

North to South on the Eastern side : 51 Links

North to South on the Western side : 48 Links

East to West on the Northern side : 140 Links and

East to West on the Southern side : 167 Links

Both item Nos. (i) and (ii) herein above lying situate within Sub - Registration District of Kayalpattinam and Registration District of Tuticorin.

Dated at Chennai on this 21st day of September 2016."

3. The plaintiffs have taken out an application in A.No.4767 of 2016 to order payment out of the said sum lying in the credit of the suit as per the Certificate of Funds dated 15.09.2006.

4. The deposit was pursuant to a common order passed in

O.A.Nos.1220 and 1221 of 2007 and Application No.7082 of 2007 dated 26.06.2008 directing the defendants 9 to 18 to deposit the rental income payable by them in respect of the portions occupied by them in the suit property, to the credit of the suit. The amount now accumulated is Rs.38,39,599/-.

5. As stated earlier, even in the joint memo of compromise, in clause 3, it is specifically understood and stated by the parties that the defendants 1 to 8 have no objection for the plaintiffs to withdraw the amount lying in the credit of the suit. Therefore, the said clause supersedes this application.

6. However, there will be a direction to the Registry to pay the sum of Rs.38,39,599/- (Rupees Thirty Eight Lakhs Thirty Nine Thousand Five Hundred and Ninety Nine Only) lying in the credit of the suit, as per the Certificate of Funds dated 15.09.2016, by issuing a cheque in favour of the first plaintiff. There is no objection for the same by the other parties.

7. Accordingly, the joint memo of compromise dated 21.09.2016 is recorded and the suit is decreed in terms of the joint memo of compromise. The joint memo of compromise shall form part of the decree. No costs.

21.09.2016

(5/5)

Index : Yes/No
Internet : Yes/No
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PUSHPA SATHYANARAYANA, J.

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