

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2016

CORAM

THE HON'BLE MR. JUSTICE K.K.SASIDHARAN

**C.S.No.270 of 2013
O.A.No.62 of 2016 and A.No.3902 of 2015**

1. M/s Sri Guru Mishri Foundation
Partnership Firm
Rep. by its Partnership R. Sangeetha and Likmi Chand Singhvi
No.72, Jermiah Road
Vepery, Chennai 600 007.

2. R. Sangeetha

3. Likmi Chand Singhvi

..Plaintiffs

VS

1. Gajara Bai Family Trust
Rep. by its Trustees
D. Shantilal Bafna & Amrith Kavar
371, Mint Street, Sowcarpet
Chennai 600 079.

2. D. Shantilal Bafna

3. Amrith Kavar

4. Annam Venkatavaradhiah Chetty
@ Sampath Chetty Family Trust
Rep. by its Sole Trustee
Annam Sanath
New No.9, Old No.4
Waddels Road, Kilpauk
Chennai 600 010.

5. Annam Sanath

6. K. Gouthamchand

7. D. Mahaveerchand

8.Santhosh Bai

9.Padva Kaver

10.Marudhar Kesari Estate
rep. by its Partnership Mr.D.Shantilal Bafna
No.371, Mint Street
Chennai 600 079.

.... Defendants

Civil Suit filed under Order VII Rule 1 of CPC read with Sections 51, 55 and 62 of the Copyright Act, 1957, to pass the following judgment and decree:-

- a) to declare that the memorandum of compromise dated 20.04.2011 entered between the plaintiffs and the defendants 1 to 3 is null and void;
- b) to declare that the award passed by the Lok Adalat, High Court Madras dated 26.04.2011 based on the said compromise memo is null and void;
- c) to declare that the order passed in Application No.1281 of 2011 in C.S.No.794 of 1920 is null and void;
- d) to declare that the partnership deed between the plaintiffs and the defendants 1 to 3 dated 21.04.2011 in respect of 10th defendant firm is null and void;
- e) to declare that the plaintiffs are the absolute owners of the suit property and in consequence thereof direct the defendants to deliver possession of the suit property to the plaintiffs failing which grant possession of the suit property through the process of this Court; and grant such other relief.

For Plaintiffs : Mr.S.Ramesh Kumar

For Defendants : Mr.Sathish Parasaran,
Senior Counsel
for Mr.R.Parthasarathy [for D1 to D3]

J U D G M E N T

The plaintiffs filed the suit for declaration that the memo of compromise dated 20.04.2011, entered into with the defendants 1 to 3 is null and void and for other incidental reliefs like declaration of nullity in respect of the Award passed by the Lok Adalat on 26.04.2011; the order passed in A.No.1281 of 2011 in C.S.No.794 of 1920 and that the partnership deed executed on 21.04.2011 in respect of 10th defendant as null and void. The plaintiffs have also prayed for a declaration that they are the absolute owners of the suit property.

2. The defendants entered appearance through counsel and contested the suit and related applications. Subsequently, the parties have arrived at a settlement, after due deliberation and entered into a joint memorandum of compromise.

3. This Court taking into account the plea made by the parties, appointed an Advocate Commissioner to inspect the premises in question before recording the compromise. Accordingly, the Advocate Commissioner inspected the premises and submitted a Report. Thereafter, the parties have filed the joint memorandum of compromise on 28 April 2016 before the Court. The joint memorandum reads thus:

**"JOINT MEMORANDUM OF COMPROMISE
BETWEEN THE PLAINTIFFS AND DEFENDANTS 2
AND 3**

1. The plaintiffs (herein after known as Plaintiffs) and the 2nd and 3rd defendants (hereinafter known as defendants) jointly agree hereto have amicably settled all the disputes in its entirety as appearing hereinafter.

2. The parties have agreed to divide the property described in the Schedule to the Plaint filed in C.S.No.270 of 2013, (hereinafter described as "the Premises") as follows:

a) The land situated in the premises shall be shared equally between the plaintiffs jointly, on the one hand, and defendants 2 and 3, jointly, on the other hand.

b) The building situated in the Premises shall be shared in the following manner. The building is divided into Area "A" and Area "B". Area "A" shall be owned by the Plaintiffs jointly. Area "B" shall be owned by the defendants 2 and 3 jointly.

AREA "A" shall consist of:

i) Ground Floor of the building situated in the Premises.

ii) The western portion of the first floor of the building situated in the Premises, abutting the Common Area, excluding the Showroom situated in the eastern side of the building, as detailed in the sketch attached to the present memo of compromise (hereinafter "Sketch").

AREA "B" shall consist of:

The showroom situated on the eastern side of the first floor of the building situated in the Premises and the entire second, third and fourth floors of the said building.

3. All parties to this compromise shall be entitled to the use and enjoyment of the common areas of the

building in the ground and first floor. The amenities in the building shall be as earmarked in the sketch for both the parties.

4. **Generator:** A generator shall be installed in the electricity room for use to provide electricity back-up for the common areas in the building. If any of the parties to this compromise is/are not agreeable to the same, the other party/parties may install a generator at their own cost in the electricity room and use the same for their share of the building and/or the common areas.

5. **Electricity Meters:** Separate meters/sub-meters already in place. EB Cards with respect to Area "A" shall be handed over by the defendants to the plaintiffs on or before 31st May, 2015.

6. **C.C.T.V. and Security Staff:** Costs to be shared equally between either parties.

7. **Lifts:** 2 Nos. in operation. Maintenance and replacement costs to be borne equally by either parties.

8. **Metro Water:** Tax paid till date by Shree Marudhar Kesari Estate. After compromise, each of the parties shall pay his/her own dues relatable to his/her area and the connection can be changed to individual names at his/her own cost. Copy of the Water Tax receipt with respect to Area "A" shall be handed over by the defendants to the plaintiffs on or before 31st May, 2015.

9. **Property Tax:** Paid till date by Shree Marudhar Kesari Estate. After compromise, each of the parties shall pay his/her own dues relatable to his/her area and the connection can be changed to individual names at his/her own cost. Copy of the Property Tax receipt with respect to Area "A" shall be handed over by the defendants to the plaintiffs on or before 31st May, 2015.

10. **Drainage**: Drainage charge paid till date by Shree Marudhar Kesari Estate. After compromise, each of the parties shall pay his/her own dues relatable to his/her area and the connection can be changed to individual names at his/her own cost.

11. **Sump and Tank** (Terrace): To be for the common use and enjoyment of all parties.

12. **Bore Well, Sump and Tank** (in Ground Floor) with water pipeline to be replaced or improved immediately and to be for the common use and enjoyment of all parties.

13. **Common Area and Amenities** shall be enjoyed in common and repairs, replacements or improvements to be undertaken immediately and costs to be shared equally.

14. Maintenance charge to be equally shared by both parties and paid on monthly basis.

15. All furniture, electrical fittings and other fixed items shall be taken by respective party to whom the area is allotted. D.Shantilal Bafna shall remove all items situate in room Nos. 7 on the Southwestern side of the 1st floor and from the reception area on the ground floor common passage between the main entrance and staircase within a period of 6th June 2016 from today.

16. After the recording of the compromise, maintenance work shall start immediately and be completed by July 2016.

17. On own cost, each party can repair, alter, remove, provide staircases in their respective area and also combine their respective portions and carry out plumbing, interior work or other work without in any way affecting the structural stability of the building.

18. In order to give effect to the Memorandum of Understanding, either party shall sign all deeds, documents or other papers as may be reasonably required by other party.

19. Accounts pertaining to the tenth defendant partnership till 31.03.2016 or as on the date of signing the Memorandum of Understanding shall be produced on or before July 31st, 2016 and the profit/loss in respect of the firm shall be shared equally between the parties herein.

20. Income tax pertaining to Sri Marudhar Kesari Estate has been paid up to the end of the financial year 2015-2016 (Assessment Year 2016-17).

21. The suit may be decreed on the above terms and a copy of the compromise decree may be directed to be indexed in the office of the Sub - Registrar, Sowcarpet, Chennai. Any registration fees and related expenses shall be borne equally by the parties.

22. Any security deposit received from the present tenants in occupation of portion of the building situated in the Premises shall be returned by the defendants to the respective tenants by 31st July, 2016. The plaintiffs may collect the rents from tenants in the ground floor from August, 2016.

23. Except the pending issues in serial Nos.20 and 23, all disputes between the parties are fully settled by this Memorandum of Compromise and the parties declare that they shall have no further claims as against each other.

Dated at Chennai on this, the 28th day of April, 2016.

sd/-Counsel for the Plaintiffs
sd/-Counsel for the 2nd and
3rd defendants

sd/-Plaintiff
sd/-2nd and
3rd Defendant."

4. Since the parties wanted the Advocate Commissioner to hand over physical possession of the respective portions, I have appointed the very same Advocate Commissioner who inspected the property earlier, to give possession to the concerned parties. Accordingly, the Advocate Commissioner handed over possession of the respective portion to the parties as per compromise deed at 9.00 a.m. today. The parties have given acknowledgment after taking possession.

5. The plaintiffs have taken possession of the property marked as "A". The defendants 2 and 3 took possession of the property marked as "B". The delivery of possession is hereby recorded.

6. Since the Advocate Commissioner has already handed over physical possession of the respective portion to the respective parties, each party would enjoy the portion earmarked to them henceforth without any kind of interference from others.

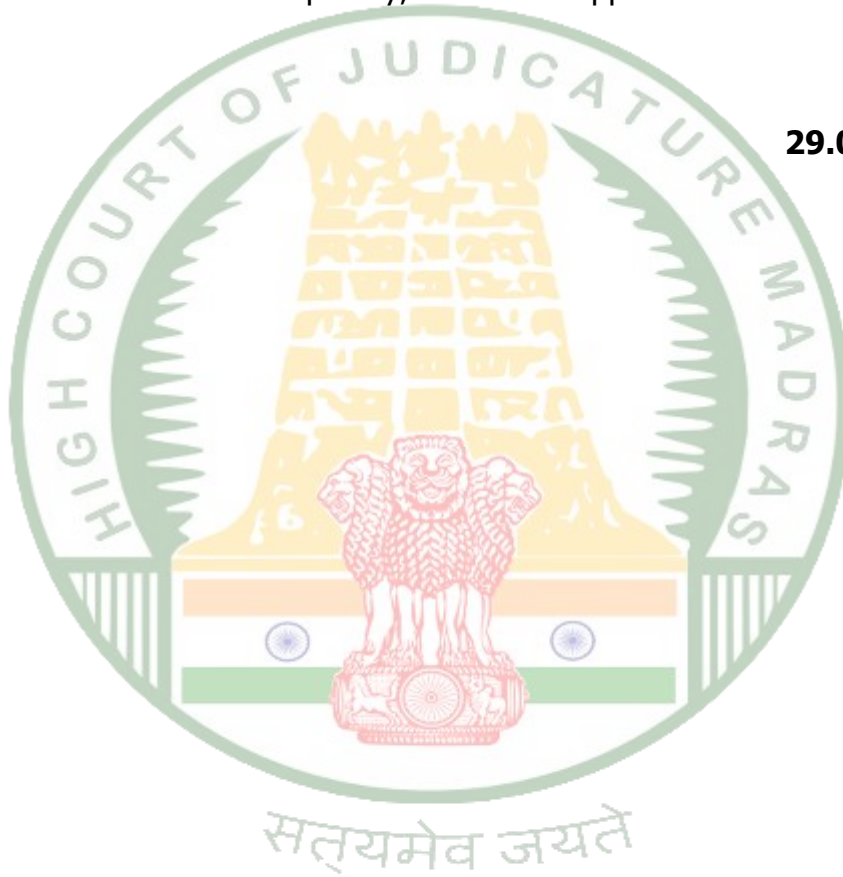
7. The tenanted portion is allotted to the plaintiffs. The defendants 2 and 3, in paragraph 22 of the joint memorandum of compromise have given an undertaking, that they would return the advance amount to the respective tenants, by 31 July, 2016. The plaintiffs are permitted to call upon the tenants to attorn the tenancy and pay the rent effective 01.08.2016, on account of allotment of "A" portion to them as per the memorandum of

compromise.

8. The suit is decreed in terms of the joint memorandum of compromise. The sketch and the joint memorandum of compromise shall form part of the decree. Consequently, connected applications are closed.

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29.04.2016



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K.K.SASIDHARAN, J.

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