

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

S.A.No.23 of 2016

and

C.M.P.No.620 of 2016

Palanimuthu

... Appellant

..Vs..

1.Narayanasamy

2.Adhimoolam

3.Logambal

... Respondents

Prayer: This Second Appeal has been filed under Section 100 of Civil Procedure Code., praying to set aside the Judgment and Decree dated 23.03.2015 made in A.S.No.33 of 2013 on the file of the Learned Principal District Judge, Ariyalur, modifying the Judgment and Decree dated 23.09.2008 made in O.S.No.76 of 2014 on the file of the District Munsiff of Jayankondam.

For Appellant : Mr.K.A.Vimal Kumar

JUDGMENT

This memorandum of Second Appeal has been directed against the judgment and decree, dated 23.03.2015 and made in A.S.No.33 of 2013 on the file of the Learned District Judge, Ariyalur, modifying the judgement and decree dated 23.09.2008 and made in O.S.No.76 of 2014 on the file of the Learned District Munsif, Jayankondam.

2. The appellant herein is the third defendant in the suit in O.S.No.76 of 2014, whereas the first respondent is the plaintiff and the respondents 2 and 3 are the defendants 2 and 4 respectively.

3. It is manifested from the records that the first respondent had filed the above suit as against the appellant/D3 as well as the remaining defendants including the respondents 2 and 3 herein for partition claiming half share in the plaint first item.

4. In so far as, the plaint second item is concerned, he had claimed a declaratory decree and partition of half share after the life time of Kasiammal/D1. The first defendant/ Kasiammal during the pendency of the suit had passed away. The second defendant one Adhimoolam remained exparte. The appellant being the third defendant and the fourth defendant one Logambal alone had contested the suit by filing their written statements.

5. On appreciation of the evidences both oral and documentary, the Trial Court had proceeded to decree the suit in respect of the first item of plaint schedule property, granting a preliminary decree, in respect of half share.

6. In so far as the second item is concerned, the suit was dismissed on

the ground that the first respondent / plaintiff is not entitled to get the declaratory decree as well as partition of half share.

7. Challenging the preliminary decree granted in respect of first item of suit property, the appellant/D3 had filed an appeal in A.S.No.33 of 2013. Questioning the dissolved portion of the suit i.e., in respect of the second item of the suit property, the first respondent / plaintiff had filed an appeal in A.S.No.53 of 2013. Both the appeals were consolidated together and disposed of in the common judgment dated 23.03.2015. The appeal in A.S.No.33 of 2013 filed by the appellant/D3 was dismissed, confirming the judgment and decree of the Trial Court, dated 23.09.2008. The appeal filed by the first respondent/plaintiff in A.S.No.53 of 2013 was allowed. Modifying the decree of the Trial Court, granting the declaratory decree in respect of suit second item and also granting a decree for recovery of possession and the defendants were directed to surrender the vacant possession of the second item of suit property within a stipulated time of two months.

8. Having been aggrieved by the judgement and decree of the First Appellate Court, the appellant being the third defendant alone has preferred this Second Appeal.

9. When the Second Appeal was taken up for hearing today, Mr.K.A.Vimal

Kumar, learned counsel appearing for the appellant has submitted that the appellant/D3 and the first respondent who is the plaintiff in the suit have settled their dispute out of Court at the intervention of their well-wishers and elderly people of their family. Learned counsel appearing for the appellant has also submitted that the terms of compromise entered into between the appellant/D3 and the first respondent/plaintiff have been reduced into writing and to that effect a joint memorandum of compromise signed by the appellant and the first respondent was filed. The first respondent/plaintiff has made his presence in the open Court and he has also conceded that the Second Appeal might be disposed of in terms of compromise.

10. It is brought to the notice of this Court that both the appeals as well as the first respondent are closely related with each other and therefore they have entered into a compromise to settle their dispute amicably and accordingly the first respondent/plaintiff has agreed that the sale deed dated:25.10.1998 executed by his brother one Mr.Adhimoolam for himself as well as on his behalf (plaintiff) is true and valid and would be binding upon his share. The appellant being third respondent has agreed to purchase the first respondent/plaintiff's half share in the suit property for a total sale consideration of Rs.1,25,000/-. The first respondent/plaintiff had received a sum of Rs.50,000/- on 30.01.2016 and another a sum of Rs.50,000/- on 06.02.2016 (total Rs.1,00,000/-) from the appellant/D3. The first respondent/plaintiff agrees to receive the remaining

balance of Rs.25,000/- at the time of receiving the compromise decree in the present Second Appeal in S.A.No.23 of 2016.

11. The first respondent/plaintiff also reiterate and declare that the sale deed dated 25.10.1998 executed by his brother one Mr.Adhimoolam for himself as well as on his behalf (plaintiff) is true and valid would be binding upon his half share in the suit property.

12. The first respondent/plaintiff declare that as per the sale deed dated 25.10.1998, the appellant/D3 is the absolute owner of the suit property and he also declare neither himself nor his legal heirs are having any semblance right over the suit property.

13. Both the appellant/D3 as well as the first respondent/plaintiff have agreed to dispose the Second Appeal in terms of memorandum of compromise.

14. This Court has considered the submissions made by the appellant/D3 as well as the first respondent/plaintiff. This Court has also interacted with them in the open Court and they have also agreed to dispose of the Second Appeal in terms of memorandum of compromise. Accordingly, this Court finds that the Second Appeal may be disposed of in terms of the memorandum of joint compromise filed by the appellant/D3 and the first respondent/plaintiff.

15. The third respondent being the fourth defendant has not preferred any appeal against the decree of the Trial Court. The second respondent being the second defendant remained exparte and therefore notice to the respondents 2 and 3 is dispensed with.

16. Keeping in view of the above fact, this Second Appeal is disposed of in terms of the memorandum of joint compromise, dated 18.04.2016 which is signed by the appellant/D3 and the first respondent/plaintiff respectively. The memorandum of joint compromise shall form part of the decree. No costs.

20.04.2016

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To

- 1.The Principal District Court, Ariyalur
- 2.The District Munsiff,Jayankondam.

T.MATHIVANAN,J.,

nvi

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