

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

S.A.No.2117 of 2001
and
C.M.P.No.862 of 2013

1.Kursheed Bi (deceased)

2.S.Mallika Bi

3.M/s.B.B.K.Exports,
Rep. by its Managing Partner-
N.Baskaran,
No.70, Vanapadi Road,
Ranipet, Vellore District. Appellants/Plaintiffs

(3rd appellant brought on record as
LR of the deceased 1st appellant
vide order of Court dated 04.02.2016
made in CMP.Nos.1617 to
1619 of 2016 in S.A.No.2117 of 2001
and declared as the LR
of the Estate of the 2nd appellant
vide order of Court dated 25.02.2016
made in CMP.No.2815 of 2016
in S.A.No.2117 of 2001).

Vs.

1.Kupppammal

2.Venkatesan

3.Pondurengan

4.Easwari

5.Gajendran

6.Kuberan

7.Chitrakala

... Respondents/Respondents

Prayer:- This Memorandum of Second Appeal is filed under
Section 100 of Civil Procedure Code against the Judgment and
decree dated 30.11.2000 and made in the appeal in A.S.No.59 of
1991 on the file of the Principal Subordinate Court, Ranipet,
confirming the judgment and decree dated 30.03.1989 and made
in the suit in O.S.No.152 of 1986 on the file of the
Principal District Munsif Court at Ranipet.

For Appellants : Mr.R.Subramanian

For Respondents : Mr.K.Mohana Murali

J U D G M E N T

This Memorandum of Second Appeal has been directed against the Judgment and decree dated 30.11.2000 and made in the appeal in A.S.No.59 of 1991 on the file of the Principal Subordinate Court, Ranipet, confirming the judgment and decree dated 30.03.1989 and made in the suit in O.S.No.152 of 1986 on the file of the Principal District Munsif Court at Ranipet.

2. When this second appeal is taken up for hearing today, Mr.R.Subramanian, learned counsel appearing for the appellants and Mr.K.Mohana Murali, learned counsel appearing for the respondents 1 to 7 have jointly submitted that the dispute between the parties has been settled and to that effect they have jointly filed a Memorandum of Compromise under Order 23, Rule 3 of the CPC.

3. It is manifested from the records that the appellants 1 & 2 had filed the suit in O.S.No.152 of 1986 on the file of the learned District Munsif, Ranipet, Vellore District as against one Thoppai Reddy and his wife Kuppammal, seeking the relief of declaration of their title to the suit property and for recovery of possession. That suit was dismissed. Against which, the appellants 1 & 2 had preferred an appeal in A.S.No.59 of 1991 on the file of the learned Subordinate Judge, Ranipet. Pending appeal, the first respondent, Thoppai Reddy had passed away. Subsequently his children were brought on record as respondents 3 to 8 in the appeal. The said appeal in A.S.No.59 of 1991 was also dismissed by the learned Subordinate Judge, Ranipet, confirming the judgment and decree of the Trial Court. Having been aggrieved by the judgment of the first Appellate Court, the appellants/plaintiffs have filed the present second appeal.

4. It is also revealed from the records that during the pendency of the second appeal, the first appellant Kursheed Bi had died on 01.09.2002, leaving behind her four sons namely Abdul Rahim, Abdul Sathar, Mohideen Basha and Abdul Jabbar. Her husband predeceased her.

5. The said four children of the first appellant Kursheed Bi alongwith second appellant Mallika Bi had sold the property, which is the subject matter of the suit to one Thilagavathi, daughter of Selvaraj under a Sale Deed dated 28.01.2004. The said Thilagavathi had in turn sold the property to M/s.Gee Kay Infrastructures, a partnership firm under a Sale Deed dated 18.03.2010.

6. The third appellant had purchased the said property from M/s.Gee Kay Infrastructures under a Sale Deed dated

16.09.2013. After, the said purchase, after coming to know about the pendency of the present second appeal, the third appellant had filed petitions viz., C.M.P. Nos.1617 to 1619 of 2016, seeking to bring him on record as the legal representative of the Estate of the deceased first appellant. The said application was allowed on 04.02.2016 and in consequence thereof, the third appellant has been brought on record.

7. Though, the second appellant remains a party to the appeal since she has sold away the property even in the year 2004 under a Sale Deed dated 28.01.2004, registered as document No.263 of 2004 in the Office of the Sub Registrar, Wallajah. Hence, the third appellant has filed a petition in C.M.P.No.2815 of 2016, to declare them as the legal representative of the Estate of the second appellant S.Mallika Bi. The said application was ordered on 25.02.2016. Since, the second appellant does not have any interest in the suit property as on today she is not made a signatory to the present compromise.

8. At the intervention of well wishers, the parties have settled their dispute amicably on the following terms:

(i) The 3rd appellant has paid a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) to the respondents 1 to 7 in the following manner:-

(a)Rs.6,00,000/- (Rupees Six Lakhs only) paid in cash to the first respondent.

(b)Rs.4,00,000/- (Rupees Four Lakhs only) each paid by way of Demand Drafts bearing Nos.756651, 756652, 756653, 756654, 756655 and 756656 drawn on the State Bank of India, S.M.E. Branch, Wallajapet, in all a sum of Rs.24,00,000/- (Rupees Twenty Four Lakhs only) in favour of the respondents 2 to 7.

(ii)The respondents do hereby admit and acknowledge the title of the appellants to the suit property and have put the 3rd appellant in possession of the suit property subject matter of the suit in O.S.No.152 of 1986 on the file of the District Munsif, Ranipet.

(iii)The suit in O.S.No.152 of 1986 shall stand decreed after setting aside the Judgment and decree of the Trial Court dated 30.03.1989 in O.S.No.152 of 1986 on the file of learned District Munsif, Ranipet as well as the judgment and decree dated 30.11.2000 and made in the appeal in A.S.No.59 of 1991 the learned Principal Subordinate Judge, Ranipet.

(iv)The second appeal in S.A.No.2117 of 2001 shall stand be allowed without cost.

(v)The respondents acknowledge having handed over vacant and peaceful possession of the suit property to the 3rd appellant herein being the purchaser from the appellants 1 & 2.

(vi)The learned counsel appearing on either side have urged that the judgment and decree might be passed in terms of the Memorandum of compromise.

9. This Court has considered the submissions made by the learned counsel for the appellants as well as the respondents.

10. Mr.N.Bhaskaran, being the Managing Partner of the third appellant viz., M/s.B.B.K.Exports has authorized one Mr.V.Manoharan, their General Manager to attend the case and to execute a compromise memo with the respondents in this second appeal on behalf of the third appellant M/s.B.B.K.Exports.

11. Mr.V.Manoharan, the authorized person of third appellant has appeared in person before this Court.

12. The first respondent Kuppammal has appointed a Power of Attorney namely Mr.T.Pandurengan, who is the third respondent in this second appeal to sign the Memorandum of compromise on her behalf. To that effect, she has also given a Power of Attorney in his favour. The original Power of Attorney in original is taken on record. The said Pandurengan is none other than the son of the first respondent Kuppammal. The respondents viz., Venkatesan(R2), Pandurengan(R3) for himself and on behalf of Kuppammal, Eswari(R4), Gajendran(R5), Kuberan(R6) and Chitrakala(R7) have also made their physical presence before this Court. They have also admitted that they had put their signatures beneath the Memorandum of compromise. They have also agreed that they had received the entire amount of Rs.30,00,000/- as stated in column No.1, Sub-Clauses (a) & (b) in the Memorandum of compromise.

13. Keeping in view of the above fact and on considering the submissions made by the learned counsel appearing for the appellants as well as the respondents, this Court is of the view that in the interest of justice, a compromise decree may be passed in accordance with the terms of the Memorandum of compromise filed by the parties to the appeal jointly under Order 23, Rule 3 of the CPC.

14. Accordingly, this second appeal is allowed. The decree and judgment passed in the appeal in A.S.No.59 of 1991 on the file of the learned Principal Subordinate Judge, Ranipet as well as the suit in O.S.No.152 of 1986 on the file of the learned Principal District Munsif, Ranipet are set aside, and the suit in O.S.No.152 of 1986 is decreed. This

Memorandum of Compromise filed by the parties to the appeal under Order 23, Rule 3 of the Civil Procedure Code is taken on record and shall form part of the decree. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
Ranipet.
2. The Principal District Munsif,
Ranipet
3. The Section Officer,
V.R.Section,
High Court, Madras.

+2cc's to Mr.R.Subramanian, Advocate, S.R.No.13122
+1 cc to M/s.K.Mohanamurali, Advocate, 13446 (17.06.2016)

S.A.No.2117 of 2001
and
C.M.P.No.862 of 2013

NM(CO)
CA(02/06/2016)

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