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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Appeal Suit (MD) No.124 of 2014

and M.P.(MD) No.1 of 2014

1.Kannagi

2.Kaliyamurthy

... Appellants/Defendants 6 & 7

Vs.

1.Elamurugu

2.Durairaj

3.K.Meera

4.S.Venkatesan

5.M.Johnson Thangaraj

6.Nilopher John

... 1st Respondent/Plaintiff

... Respondent 2 to 6/Defendants
1 to 5

PRAYER : Appeal Suit filed under Section 96 C.P.C., praying to set aside the judgment and decree dated 09.04.2014 made in O.S.No.54/2010 on the file of the Principal District Judge, Thanjavur.

For Appellants : Mr.ARL.Sundaresan for A.L.Ganthimathi

For 1st Respondent : Mr.O.K.Megavarnam

For 3rd Respondent : Mr.P.Sesu Balan Raja

For 4th Respondent : Mr.Arun Prasad

For 6th Respondent : Mr.B.Jameel Arasu

5th Respondent : No appearance

2nd Respondent : Not found in the address

J U D G M E N T

(Judgment of the Court was made by **S.MANIKUMAR, J.**)

Material on record discloses that S.Elamurugu, S/o.P.Subramanian Chozhagar, has filed a suit in O.S.No.54 of 2010 against R.Durairaj S/o. Rethinasabapathy, K.Meera W/o. Kannan, S.Venkatesan S/o. Sandhana Naidu, M.Johnson Thangaraj S/o. Mariya Francis, Nilopher John W/o. Sadiq Batcha, K.Kannagi W/o. R.Kaliyamoorthy and R.Kaliyamoorthy S/o. Rajangam, for a judgment and decree, directing the defendants therein, to execute a sale deed in favour of the plaintiff, in terms of the agreement for sale. After hearing the parties therein, vide judgment and decree made in O.S.No.54 of 2010, dated 09.04.2014, the prayer sought for, has been granted by learned Principal District Judge, Thanjavur.



2.Challenging the said judgment and decree, defendants 6 and 7 have jointly preferred A.S.No.124 of 2014 in this Court. Pending appeal, they have entered into compromise with the plaintiff Elamurugu, 1st respondent in this Appeal. Added further, Mr.AR.L.Sundaresan, learned Senior Counsel for the appellants submitted that the subject scheduled property consists of 28 plots, for which the suit was filed. Though the suit was decreed in entirety, now pending appeal, the plaintiff has entered into a memo of compromise dated 21.12.2015, with the defendants 6 and 7/appellants, giving up his right and claim, over 24 plots.

3.Learned Senior Counsel further submitted that respondent No.1/plaintiff, has also agreed to enforce his right under the judgment and decree dated 09.04.2014, on the file of learned Principal District Judge, Thanjavur only in respect of 4 plots.

4.Learned Senior Counsel also submitted that those 4 plots are stated to be purchased from the original owner of the properties. Thus, by filing two memos dated 21st December, 2015, the first respondent/plaintiff has given up all the rights in respect of the property described in Schedule 2 to the memo filed by him, restricted his right only in respect of property described in schedule No.3, of the same memo.

5.Memos of compromise filed by the defendants 6 and 7/appellants and the 1st respondent/plaintiff are extracted hereunder:

"MEMO FILED BY THE APPELLANTS"

1.The Appellants abovenamed submit that the 1st Respondent herein had filed the suit in O.S.No.54 of 2010 on the file of Principal District, Court, Thanjavur praying for a decree for Specific Performance. The said Suit was decreed by Judgment and Decree dt. 9.4.2014.

2.Aggrieved against the same, the Appellants herein, who were the Defendants 6 and 7 in the Suit, have filed the present Appeal in A.S.No.124 of 2014.

3.During the pendency of the Appeal, the Appellants herein, the 1st Respondent herein and the 3rd Respondent herein had discussions and negotiations and arrived at an Out of Court Settlement among themselves.

4.In the light of the above, the 1st Respondent herein has filed a Memo in this Hon'ble Court giving up all his rights in respect of the property described in Schedule-2 hereunder and restricting his rights only with regard to the properties described in Schedule-3 hereunder.

5.The Appellants hereby state that they have no objection for confirming the Decree with regard to the properties described in Schedule-3 hereunder and hence, are filing this Memo to dismiss the Appeal as withdrawn as settled Out of Court.

For the reasons stated above, it is humbly prayed that this Hon'ble Court may pleased to dismiss the Appeal in A.S.No.124 of 2014 as withdrawn and thus render justice.

SCHEDULE-1 - 28 Plots



7, 11A, 12, 66/3, 4, 5, 6B, 7, 8, 9, 10, 11A, 11B, 67/1, 3, 4, 5, 8, 9, 10, 11, 12, 13A, 13B, 13C, 14A, 14B, 15 and 16. Total area 12 Acres and 81 Cents. CMDA Approval No.132/2002 "A Gowri Amman Nagar", Plot No.49, 49A, 50, 50A, 52, 54, 56, 67, 68, 71, 72, 73, 74, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89. Total area 65,389 Square Feet.

SCHEDULE-2 - 24 Plots

Plot Nos.49A, 50, 50A, 52, 54, 56, 67, 68, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86 out of Schedule- 1 Property.

SCHEDULE-3 - 4 Plots

Plot Nos.49, 87, 88, 89 out of Schedule- 1 Property."

"MEMO FILED BY THE 1st RESPONDENT

1.The 1st Respondent hereby submits that he filed the Suit for Specific Performance in O.S.No.54 of 2010 on the file of Principal District Judge, Thanjavur in respect of the properties described in Schedule - I hereunder.

2.The said Suit was decreed by Judgment and Decree dt.9.4.2014.

3.The Appellants herein, who are Defendants 6 and 7 in the said Suit, have filed the present Appeal in A.S.No.124 of 2014 in this Hon'ble Court.

4.During the pendency of the Appeal, there was discussion between the Appellants, this Respondent and Mrs.K.Meera, the 3rd Respondent herein and they have arrived at a Memorandum of Settlement out of Court and the same has been duly executed on 21.12.2015.

5.In the light of the Out of Court Settlement arrived at between the parties, the 1st Respondent herein states that he is giving up all his rights in respect of the property described in Schedule-2 hereunder and is restricting his rights for Specific Performance only with regard to the property described in Schedule-3 hereunder.

6.The 1st Respondent prays that this Hon'ble Court may be pleased to record this Memo and set aside the decree with regard to the properties described in Schedule-2 hereunder and thus render justice.

SCHEDULE-1 - 28 Plots

Thanjavur District, Vallam Sub-Registrar, Vallam Therku Sethi Village, Survey No.23/1, 4, 5, 7A, 7B, 8, 9, 24/2, 3,4, 6, 7, 11A, 12, 66/3, 4, 5, 6B, 7, 8, 9, 10, 11A, 11B, 67/1, 3, 4, 5, 8, 9, 10, 11, 12, 13A, 13B, 13C, 14A, 14B, 15 and 16. Total area 12 Acres and 81 Cents. CMDA Approval No.132/2002 "A Gowri Amman Nagar", Plot No.49, 49A, 50, 50A, 52, 54, 56, 67, 68, 71, 72, 73, 74, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89. Total area 65,389 Square Feet.

SCHEDULE-2 - 24 Plots

Plot Nos.49A, 50, 50A, 52, 54, 56, 67, 68, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86 out of Schedule- 1 Property.

**SCHEDULE-3 - 4 Plots**

Plot Nos.49, 87, 88, 89 out of Schedule- 1 Property."

6.In the light of the memorandum of the 1st respondent/plaintiff dated 21.12.2015, restricting the claim, over the right of the properties, to the plots mentioned in Schedule above present appeal has to be allowed, setting aside the judgment and decree of the suit in O.S.No.54 of 2010 dated 09.04.2014, for which Mr.O.K.Megavarnan, learned counsel for respondent No.1/plaintiff has no objection. His statement is placed on record.

7.Thus, Appeal Suit No.124 of 2014 is allowed, excluding the properties mentioned in Schedule-3 to the memorandums, dated 21.12.2015. Compromise memos shall form part of the records. Registry is directed to make it clear that the appeal is allowed only in respect of 24 plots set apart in Schedule No.2. In respect of the other 4 plots, more fully mentioned in Schedule No.3, appeal is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/

Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar

To

The Principal District Judge,
Thanjavur.

+1cc to M/S.O.K.Megavarnan, Advocate in SR.No.15854

+1cc to M/S.P.Sesubalan Raja, Advocate in SR.No.15853

Appeal Suit (MD) No.124 of 2014
and M.P. (MD) No.1 of 2014
17.03.2016

sj

PA/AAL-MPA/SAR II/20.06.2016/4P/4C

Encl:copies of memos filed by the appellants and 1st respondent