

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2017

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

Appeal Suit No. 55 of 2016

&

Second Appeal No. 1408 of 2011

&

C.M.P. No. 2455 of 2016

Razia Begum ..Appellant in A.S.No.55/2016 /19th Defendant
in OS.1530 of 2011 / S.A. No. 1408/2011
/Plaintiff in OS.467 of 2009

Vs.

1. A.A. Rahamathullah
2.S.A. Sirajunnisa

..Respondents 1 & 2 in A.S. No.55/2016/
Plaintiff 1 & 2 in OS.No.1530 of 2011/S.A.
No. 1408 /2011/Defendant 1 & 2 in OS.No.467
of 2009

3. Zohra Bee
4. M.H. Iqbal @ M.H. Mohamed
Iqbal Basha
5. H. Dilavar Hussain @ Dilavar
6. Fareetha
7. Zakir Hussain
8. H. Latheef Basha
9. Mukthiyar Begum
10. Zakhir Basha
11. Dasthakir Basha
12. Nazreen
13. H. Kaleem Basha
14. K. Azizunnisa
15. K. Sabeer Hussain
16. K. Saheena Begum
17. H. Munna Basha
18. Fareetha Bagum
19. Naseema Banu
20. H. Kafser Basha
21. Munni
22. Chand Basha
23. Fazeelath Begum
24. Hajeera
25. Zohra Bee
26. Raheem

27. Kareemulla
28. Mohameed Faizal
29. Sathik Basha
30. Ghousia
31. Syed Amanulla

..Respondents 3 to 31 in A.S.
No.55/2016/Defendants 1 to 18
& 20 to 30.

Prayer in A.S. No. 55/2016: Appeal Suit filed under Section 96 of CPC against the judgment and decree dated 16.04.2014 made in O.S. No. 1530 of 2011 on the file of VII Additional Judge, City Civil Court, Chennai.

Prayer in S.A. No. 1408/2011: Second Appeal filed under section 100 of CPC against the judgment and decree dated 24.03.2011 made in A.S. No. 377/2010 on the file of IV Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 01.02.2010 in O.S. No. 467/2009 on the file of XVIII Assistant Judge, City Civil Court, Chennai.

For Appellant
in both A.S.
& Second Appeal :: Mr.N.A. Nissar Ahmed
For Respondents :: Mr.G. Saravanan
in both A.S. for R1 & R2
& Second Appeal :: R3 to R31-Given up in AS

J U D G M E N T

The above appeal suit has been filed by the 19th defendant, who suffered a decree of recovery of possession in O.S. No. 1530 of 2011 filed by plaintiffs/respondents 1 and 2 herein on the file of VII Additional Judge, City Civil Court, Chennai. The said decree was passed on 16.04.2014.

2. Respondents 1 and 2 herein, as plaintiffs, filed O.S. No. 1530 of 2011, as against the appellant and respondents 3 to 31 for a judgment and decree,

(i) directing defendants 1 to 20 therein to deliver vacant possession of the plaint schedule property to the plaintiffs;

(ii) directing defendants 1 to 20 therein to pay the past, present and future mesne profit at the rate of Rs.20,000/- per month from 01.01.2009 until delivery of possession to the plaintiffs;

(iii) for a mandatory injunction directing defendants 21 to 30 therein not to pay the monthly rent

to defendants 1 to 20 and to deposit the monthly rents into the Court to the credit of the above suit every month on a stipulated day;

(iv) for a perpetual injunction restraining defendants 1 to 20 therein from encumbering, alienating or in any manner dealing with the suit property including changing tenants and inducting new tenants;

(v) directing the defendants to pay the cost of the suit.

3. Before the Trial Court, except the appellant herein, who was the 19th defendant, all other defendants remained absent and they were set ex parte. By judgment dated 16.04.2014, the Trial Court decreed the suit holding that defendants 1 to 20 are liable to hand over the possession of the suit property to the plaintiffs and mandatory injunction is granted against defendants 21 to 30 to deposit the monthly rent into the Court on or before every 10th day of English Calendar month and permanent injunction is granted against defendants 1 to 20 from encumbering, alienating or in any manner dealing with the suit property including changing tenants and inducting new tenants. The claim with regard to the past and future mesne profits was directed to be decided by separate proceedings. Challenging the said judgment and decree, the present Appeal Suit has been preferred by the 19th defendant in the suit in O.S. No. 1530 of 2011.

4. As far as Second Appeal No. 1408 of 2011 is concerned, the very same 19th defendant in O.S. No. 1530 of 2011 had earlier filed a suit in O.S. No. 467 of 2009 as against the plaintiffs in O.S. No. 1530 of 2011/respondents 1 and 2 herein for a declaration that the sale deed dated 29.01.2008 is sham and nominal and not binding upon her, apart from other reliefs. The said suit came to be dismissed by judgment and decree dated 01.02.2010 as against which she filed A.S. No. 377 of 2010 before the IV Additional Judge, City Civil Court, Chennai, which was also dismissed, by judgment dated 24.03.2011 confirming the Trial Court's decree. Aggrieved by the same, S.A. No. 1408 of 2011 has been filed by her and the same is clubbed along with this appeal suit.

5. When the matters are taken up for hearing together, both the counsel for the appellant as well as respondents 1 and 2 would submit that the matters have been settled and they have filed a joint memo of compromise dated 03.08.2017 signed by the appellant and the 1st and 2nd respondents and countersigned by the respective counsel. The appellant as well as respondents, who are present before this Court have also confirmed the settlement of the issues by way of joint memo of compromise.

6. As per the memo of compromise, respondents 1 and 2 have

agreed to pay a sum of Rs.1 lakh for which Demand Draft dated 13.07.2017 bearing No. 303967 drawn on State Bank of India, Tiruvottiyur Branch, Chennai has already been made ready and the same would be handed over to the appellant on the date of delivery of possession i.e, within three months from today, ie on or before 03.11.2017.

7. As stated above, respondents 1 and 2 shall pay a sum of Rs.1,00,000/- by way of Demand Draft on handing over possession of a portion of the suit property, namely, property measuring about 100 sq.ft, as agreed by both the counsel and parties in open court, on 03.11.2017 at 11a.m. The Joint Memo of Compromise shall form part of the order. The appeal suit stands disposed of on the above terms.

8. In view of the joint memo of compromise, learned counsel for the appellant seeks permission to withdraw the second appeal and he has also made an endorsement to that effect. Accordingly, the second appeal stands dismissed as withdrawn as the property referred in both the proceedings is one and the same.

9. Since the matter has been settled between the parties, the appellant is entitled to refund of entire court fee. No costs.

Sd/-
Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

nv

To

1.The VII Additional Judge,
City Civil Court, Chennai.

2.The IV Additional Judge,
City Civil Court, Chennai.

3.The XVIII Assistant Judge,
City Civil Court, Chennai.

+2cc to Mr.M.A.Nissar Ahmed, Advocate SR.No.50632 & 56633

A.S. No. 55 of 2016
&
S.A.No. 1408 of 2011

TM(CO)
GN(09/03/2018)