

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2017

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.S.No.329 of 2017

M.Nazeera Banu

... Plaintiff

Vs

1.Toufee Ali
2.Samna
3.Nazeema Banu
4.Ibrahim Jailani
5.Javiya
6.Minor Khaja Moinudeen
7.Minor Pathma
D/o.Late Mohamed Ali,

(Defendants 6 and 7 are
represented by their Mother
and Natural Guardian, 5th defendant)

Defendants 5 to 7 are
residing at No.6/25, Main Road,
Kurichimalai, Tirumangalakudi,
Tiruvidaimaruthur Taluk,
Tanjore District.

... Defendants

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PRAYER: Plaint is filed under Order IV Rule 1 of O.S. Rules read with Order VII Rule 1 of CPC, praying for judgment and decree on the following terms:

- a) To pass a preliminary decree in respect of 4 1/2 shares out of 72 shares to the plaintiff in the suit schedule mentioned properties according to the Mohammedan Law of Inheritance with all metes and bounds and put the plaintiff in possession of her respective share;
- b) To grant an order of permanent injunction restraining the defendants 1 to 7 or their men, agents, legal administrators or any other person on their behalf not to encumber the suit schedule mentioned properties;
- c) To grant permanent injunction restraining the defendants 1 to 7 or their men, agents, legal administrators or any other person on their behalf from causing disturbance to the plaintiff's peaceful possession and lawful enjoyment of 4 1/2 share out of 72 share in the suit schedule mentioned properties;
- d) To appointment an Advocate Commissioner to divide the suit schedule mentioned properties in accordance with Mohammedan Law of Inheritance in respect of 4 1/2 shares out of 72 shares to the plaintiff and the fifth defendant.
- e) To pass a final decree in terms of preliminary decree with all metes and bounds and put the plaintiff in possession of her respective share;
- f) Costs of the suit; and

For Plaintiff : Mr.R.Sankarasubbu

For Defendants : Mr.K.Arunagiri for R5 to R7

JUDGMENT

Mr.R.Sankarasubbu, learned counsel for the plaintiff and Mr.K.Arunagiri, learned counsel for the defendants 5 to 7 would submit that the dispute between the parties has been amicably settled before the Tamil Nadu Mediation and Conciliation Centre, attached to this Court on 03.04.2017 and they have agreed to partition the suit properties and they have also accordingly filed a "Memo of Compromise", which reads as follows:-

"MEMO OF COMPROMISE FILED BY BOTH THE PARTIES

The abovenamed Plaintiff and the Defendants humbly submits as follows:

1. *The Plaintiff filed the above Suit before this Hon'ble Court to pass a Judgement and decree a PRELIMINARY DECREE be passed in respect of 1/8th Share out of 8/8 Share to the Plaintiff and the 5th Defendant, 2/3rd Share out of remaining 7/8 Shares to the Defendants 1, 4 and 6 and 1/3rd share out of remaining 7/8 Shares to the Defendants 2, 3, 5 and 7 in the suit properties according to the Mohammedan Law of Inheritance with all metes and bounds and put the Plaintiff in possession of her respective share and for other reliefs.*

2. *The Plaintiff submits that in the above said suit, two Applications were filed praying for leave of this Hon'ble Court to file the above Suit and to Permit the 5th Defendant to represent her minor Daughter and Son, the 6th and 7th Defendants in the said case.*

3. The Plaintiff and the defendants submit that when the above matter came up for admission before this Hon'ble Court, on request of both the parties, the above matter was referred to Mediation.

4. The Plaintiff and the defendants submit that after much deliberation, the Parties entered into compromise talks with each other in the presence of the mediators of this Hon'ble Court and before the elders/relatives of their family and community, finally arrived at a settlement, on the following terms and conditions:

- i. The Plaintiff and defendant Nos.1 to 4 shall jointly get "A", "B", "G" and "L" of the Suit schedule properties. Besides, the 5th Defendant agrees to pay to the Plaintiff and defendant Nos.1 to 4, a sum of Rs.46 Lakhs in addition to the said suit schedule properties assigned to them on equitable consideration. The above Properties and sum of Rs.46 Lakhs, accounts to 60% of the total value of the entire Suit schedule properties. The said amount has to be paid before listing the case before the High Court.
- ii. The Defendant Nos.5 to 7 shall jointly get "C", "D", "E", "F", "H", "I", "J", "K" and "M" of Suit Schedule properties. The above Properties accounts to 40% of the total value of the entire Suit schedule properties.
- iii. The Plaintiff agrees to pay a sum of Rs.6 Lakhs to the Defendant Nos.5 to 7 as arrears of maintenance for the entire properties situate in Dubai and in and around India

till date. Apart from the above, the 5th Defendant declares and agrees that she shall not claim any maintenance either on behalf of her or on behalf of the Defendant Nos.6 and 7 from the Plaintiff and Defendant Nos.1 to 4 in future and the Plaintiff and Defendant Nos.1 to 4 are in any way responsible for such claim, if any.

- iv. The 5th Defendant undertakes to maintain the estate of her minors, the defendant Nos.6 and 7 without encumbering or alienating the, except for protecting the interest and necessities of her minors, the defendant Nos.6 and 7.
- v. Both Parties mutually agrees to co-operate with each other in order to make any claim from any government, private or third parties to regain their interest in the properties or governmental bonds or insurance or securities and each party has no objection to sue jointly against any such parties to regain the common suit schedule properties or suit schedule properties assigned to them individually.
- vi. Both Parties mutually agrees to issue no objection among themselves for any claiming of the respective abovesaid suit scheduled properties assigned to them by this Memo of Compromise.

vii. Both parties mutually agrees not to encumber or alienate the assigned schedule properties unless and until the registration of Partition deed is effected before the concerned Sub-register of the registration department based on this compromise decree and judgement of this Hon'ble High Court in connection with the above suit for Partition, failing which the alienation and encumbrance would become void due to violation of the terms and condition entered between the parties by this Memo of Compromise.

viii. The other terms and conditions would come into force only after decree and judgement of this Hon'ble High Court and also after registration of partition deed based on this Memo of compromise and decree and judgement of this Hon'ble High Court. There shall be no violation of condition by both the parties."

2. The learned counsel for the plaintiff would further submit that originally the fifth defendant had agreed to pay a sum of Rs.46,00,000/- (Rupees Forty Six Lakhs only) to the plaintiff and the defendants 1 to 4, since the fifth defendant could not mobilize the amount and now she agrees to part with a partition to an extent of 1900 sq.ft in Schedule-K allotted to the fifth defendant and her minor children, who are arrayed as sixth and seventh defendants in the suit. An affidavit of undertaking, dated 19.06.2017 has been

filed to that effect.

3. The plaintiff, defendants 5 to 7 along with their counsel are present before this Court and they have submitted that the suit can be decreed based on the memo of compromise, dated 03.04.2017 and the affidavit of undertaking, dated 19.06.2017. As per the affidavit of undertaking, dated 19.06.2017, the defendants 5 to 7 shall part with the property to an extent of 1900 sq.ft in Schedule-K to the plaintiff and the defendants 1 to 4.

4. In view of the above memo of compromise, dated 03.04.2017, and the affidavit of undertaking, dated 19.06.2017, the civil suit is decreed and the Memo of compromise and affidavit of undertaking shall form part of the decree. No costs. The plaintiff is entitled for entire Court fee. No costs.

04.07.2017

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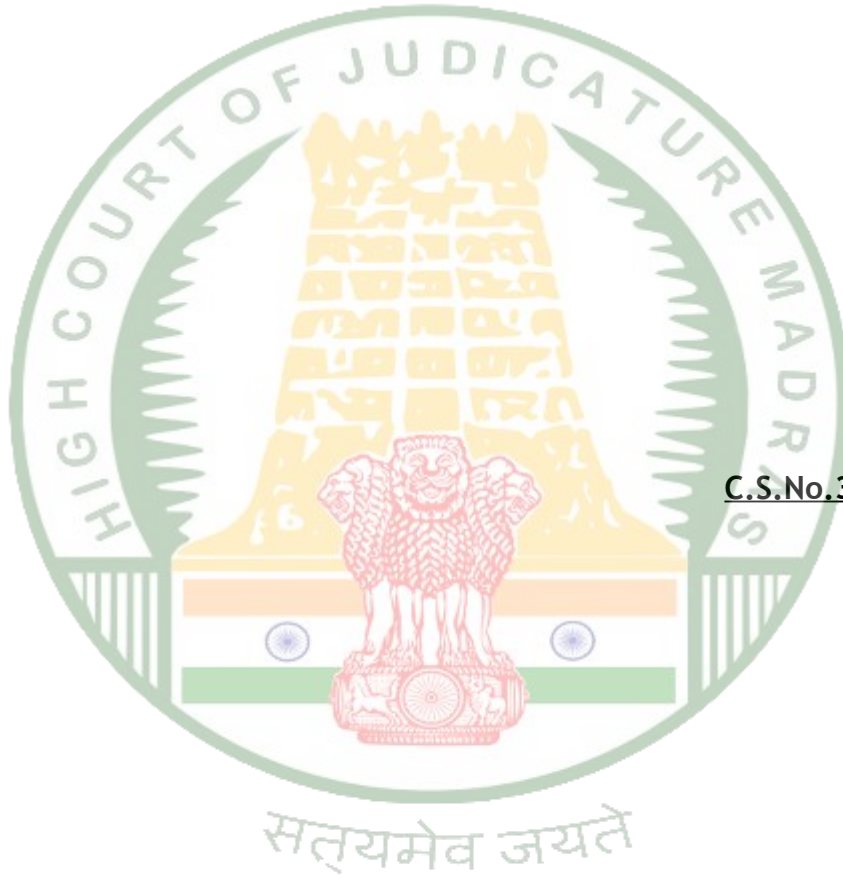
Note: Issue order copy on 07.07.2017

To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

K.KALYANASUNDARAM, J.,

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