

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.06.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.818/2016 & CMP.No.15675/2016

V.Murahari Naidu [died]
Suseela [Died]
Vatsala

..Appellant /Respondent 3/
3rd Defendant

Versus

V.Ramalinga Naidu

.. Respondent/Appellant/
Plaintiff

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the the judgment and decree dated 09.06.2016 in AS.No.7/2012 on the file of the learned I Additional District and Sessions Judge, Vellore, reversing the judgment and decree dated 31.03.2010 in OS.No.461/1999 on the file of the learned Subordinate Judge, Vellore, Vellore District.

For Appellant : Mr.G.Rajan

For Respondent : Mrs.S.P.Arthi

JUDGMENT

The 3rd defendant is the appellant herein. The suit in OS.No.461/1999, filed by the respondent / plaintiff herein, praying for declaration and for permanent injunction, came to be dismissed and on appeal, it was allowed and thereby, the decree has been granted. The 3rd defendant, aggrieved by the same, has filed the present Second Appeal.

2 The Second Appeal was admitted on 06.10.2016 on the following substantial questions of law:-

[a] Whether the First Appellate Court is not wrong in law to take the Will, viz., Ex.A.13 to be proved when the requirements prescribed under Sec.68 and 69 of the Indian Evidence Act, 1872, is not fulfilled.

[b] Whether the First Appellate Court is correct in holding that Ex.A.13, the Will is proved when the plaintiff/appellant failed to

prove and establish the absence of suspicious circumstances surrounding the due execution of the Will?

[c] Whether the Lower Appellate Court committed error in not following the procedure contemplated under Order 41 Rule 28 of the Code of Civil Procedure 1908 for recording the additional evidence than by simply marking the additional documents produced by the plaintiff and reading them into evidence?

3 The learned counsel appearing for the appellant / 3rd defendant as well as the learned counsel for the respondent / plaintiff would submit that pendency of this Second Appeal, the parties arrived at an amicable settlement and also entered a Joint Memo of Compromise dated 06.06.2017 and in the light of the terms of the same, the Second Appeal may be disposed of accordingly.

4 The learned counsel for the appellant / 3rd defendant would submit that the appellant / 3rd defendant is in possession of the "A" Schedule Property and the respondent / plaintiff is in possession of the "B" Schedule Property and the Joint Memo of Compromise is in the interest of both parties and prays for recording of the same.

5 The learned counsel appearing for the respondent / plaintiff would submit that the Second Appeal may be disposed of in terms of the Joint Memo of Compromise.

6 This Court has also made enquiry with the appellant / 3rd defendant as well as the respondent / plaintiff and they would state that having fully understood the terms of the Joint Memo of Compromise, they have subscribed their signatures and pray for disposal of the Second Appeal accordingly.

7 This Court, after hearing both the learned counsel as well as the parties concerned, is of the view that the Joint Memo of Compromise came into being on their volition and interest. It is relevant to extract the said Joint Memo of Compromise dated 06.06.2017:-

1. The parties hereby undertake and abide to divide the suit schedule property based on the Will registered as Document No.97/1993 dated 09.12.1993 executed by Late.Venkatathri Naidu, on the following manner that the Schedule "A" property will belong to the appellant herein and Schedule "B" property to the respondent and both the parties shall not interfere into each

- of their respective properties.
2. Each party shall bear their respective costs of the appeal.
 3. Neither party has any further claim against the other.
 4. The parties have entered into each joint compromise on their free will and volition.
- The parties prays for decree of the appeal recording the above terms."

8 In the light of the Joint Memo of Compromise dated 06.06.2017, the Second Appeal is disposed of accordingly and the appellant / 3rd defendant is declared to be the owner of "A" Schedule Property and the respondent / Plaintiff is declared to be the owner of "B" Schedule Property with all consequential rights. No costs. The said Joint Memo of Compromise dated 06.06.2017 shall form part of the decree. Consequently, the connected miscellaneous petition is closed.

Here enclosed Xerox copy of Joint Memo of Compromise.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

AP

To

1.The Subordinate Judge
Vellore, Vellore District.

2.The I Additional District and Sessions Judge
Vellore.

Copy to:

The Section Officer
VR Section, High Court,
Madras.

+1cc to Mr.G.Rajan,Advocate sr.41652
+1cc to Mr.S.P.Arthi,Advocate sr.41518

SA.No.818/2016

ev(co)
ss(12/7/2017)