

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE N. BALAYOGI

C.C.C.A.M.P.No.305 of 2017

IN/AND

C.C.C.A.No.17 of 2009

JUDGMENT: (*Per VRS,J*)

The main appeal arises out of a suit for partition. The suit was partly decreed and a preliminary decree was granted for the division of plaint 'A' and 'B' schedule properties into six equal shares and for the allotment of 1/6th share to each of the parties, namely, 1st plaintiff, defendants 1 to 4 and 13th defendant.

2. Aggrieved by the judgment and decree, the 3rd defendant in the suit came up with the above appeal.

3. During the pendency of the appeal, the parties have reached a settlement and entered into a joint memo of compromise. As a consequence, they filed the above miscellaneous petition for recording the compromise. As per the memo of compromise, the respondents 2 and 6 to 13 are given up. This is in view of the fact that the 2nd respondent is none other than the wife of the 1st respondent. The respondents 6 to 13 either have no share or are alinees or tenants.

4. The appellant and the respondent Nos.1, 3, 4, 5 and 14 are present in Court. They all confirmed that they have read the memo of

compromise and confirmed the terms and conditions contained therein.

5. The memo of compromise reads as follows:

“Whereas the respondents 1 and 2 herein filed O.S.No.366 of 2002 on the file of the Court of the IX Additional Chief Judge, City Civil Court (Fast Track Court) at Hyderabad to pass a preliminary decree for partition of the plaint schedule properties into five equal shares of the plaint A schedule items 1,2 and 4 properties and in 8 equal shares of item No.3 of the plaint A schedule property according to good and bad equities and for allotment of separate share to the 1st respondent in items 1,2,3,4 of plaint schedule together with separate possession and 1/5th share in the moveable properties under plaint B schedule properties, b) for past profits of the properties for three years from the date of filing of the suit and for future properties till the date of realization and award costs of the suit.

Whereas the defendants filed written statement contesting the suit.

Whereas the learned IX Additional District Judge, City Civil Court (Fast Track Court) at Hyderabad decreed the suit in part by decree and judgment dated 31-1-2006 by holding that the suit A & B schedule properties be divided into six equal shares that out of the six shares one such share be allotted to each of the parties i.e., the appellant, respondents 1,3 to 5 and respondent No.14, that the 1st respondent herein is entitled for realization of accounts over items 1 to 4 of the plaint A schedule and also past and future profits, that the suit relating to the name of the 2nd respondent is dismissed, that the respondents 1,3,4,5 shall render accounts for the advance received by them from the 10th respondent and in case of refund of any advance they are liable to refund the same to the extent of their liability, that the tenant shall deposit the rents to the credit of the suit in the Court, that the Commissioner appointed in the suit shall file his report and return the warrant forthwith and submit the accounts, that the 1st plaintiff/1st respondent is entitled for past profits for a period of three years prior to the date of the suit till the date of realization.

Whereas aggrieved by the decree and judgment the appellant who is the 3rd defendant filed the above appeal in this Hon’ble Court.

Whereas on the advice of the elders and well wishers of both parties herein all the parties have decided to settle their disputes and claims after negotiations and understandings and decided to reduce in writing the terms and conditions for the compromise to avoid all future disputes. The Memorandum of compromise is entered by all

the parties out of their free will and consent in full and final settlement of their claims and counter claims for the past, present or in future under the following terms and conditions.

1. Item No.1 of schedule A which is the property situated at Dhoolpet bearing House No.13-2-475 admeasuring 300 sq. yards has fallen to the share of the 14th respondent alone and none of the other claimants are having any claim over the said property which is referred as schedule "A", Item No.1 property.

2. The property situated at Pooranapool bearing House No.14-10-1274 to 1277 which is subject matter of O.S.No.12 of 1961 was alienated by the appellant and respondents 3,4,5 and 14 their respective shares and the balance area i.e. available is about 337.6 sq. yards out of 2026 sq.yards and the 1st respondent is entitled to alienate his share for which other parties have no claim or interests whatsoever in the said property which is referred to as schedule "A" item No.2.

3. The property situated at Abids bearing House No.5-4-9, Padma towers, J.N.Road, Abids, Hyderabad 500 001 and structures thereon referred to as schedule "A", item No.3 is fallen as follows:

(a) The 1st respondent is allotted towards his share whole of the 1st floor of the schedule "A" item No.3 property and whatever the liabilities are there till the date of compromise such as Municipal Taxes for the 1st floor to be borne by the appellant herein.

(b) The respondent No.4 is allotted the whole of the second floor in the schedule "A" item No.3 property.

(c) The appellant is allotted whole of ground floor in the schedule "A" item No.3 property.

(d) The 5th respondent is allotted whole of the third floor in the schedule "A" item No.3 property.

(e) The respondents 1,3,4,5 and appellant are having equal shares in the 4th floor of schedule "A" item No.3 property and each individual share is demarcated and identified in RED (Raghunandan) GREEN (Vinod Kumar), BLUE (Surender Kumar) and YELLOW (Rajender Kumar) respectively. Further, the respondents 1,3,4,5 and appellant shall enjoy the 4th floor in similar manner as mentioned above and the said individual enjoyment of the 4th floor shall come into effect only after the life time of 3rd respondent.

(f) The respondents 1,4,5 and appellant shall equally contribute and share the building maintenance of item No.3 of schedule "A"

property and under all or any circumstances they shall not be any default of the same and whatever repairs immediately required will be done by the appellant and respondents 1,3,4 and 5.

(g) The respondent No.4 who is in occupation of the 4th floor of the schedule "A" property shall enjoy the same along with the respondent No.3 and shall pay a sum of Rs.7,000/- per month to the 1st respondent on the date of recording the compromise during the life time of the 3rd respondent and after the life time of the respondent No.3 the said 4th floor shall be shared equally as stated above and respondent No.4 shall vacate the portion of the 1st respondent, appellant and respondent No.5 and hand over the respected allotted portions to respective parties as stated above, further the 4th respondent has to issue 12 cheques for 12 months at the rate of Rs.7,000/- before signing the compromise.

(h) The respondent No.1, appellant and respondents 4 and 5 are having equal shares in the terrace and parking area and the same are shown in RED, GREEN, BLUE and YELLOW colours respectively in the plan annexed hereto.

(i) The appellant shall hand over the 1st floor fallen to the share of the respondent No.1 by vacating the same by end of June, 2017 by paying a sum of Rs.12,500/- per month for the months May and June, 2017 total amounting to Rs.25,000/-.

(j) The respondent No.1, appellant and respondents 3 to 5 have to obtain separate electricity connections in their respective names and the above referred item No.3 property.

4. As on the date of compromise whatever the rental amount lies in the Court shall be withdrawn by the respondent No.3 and the same shall be kept in the name of 3rd respondent with joint account of all the respondent No.1,4 and 5 and appellant in the fixed deposit in Vijaya Bank, M.J.Road Branch, Abids, Hyderabad or any nationalized bank till the life time of the 3rd respondent and he is entitled to withdraw the interest part for his survival and after the life time of the 3rd respondent the above said amount which was deposited in the name of the 3rd respondent shall be equally distributed to the respondents 1,4 and 5 and appellant and further in case of medical emergency the 3rd respondent is entitled to withdraw necessary expenses for his medical treatment with the consent of the respondents 1,4 and 5 and appellant.

5. The property situated at Auto Nagar bearing Plot No.1, Block No.7, APIIC, Hayathnagar, Ranga Reddy District and structures thereon referred as Schedule "A" item No.4 is the sole entitlement and is to be enjoyed by the appellant and he alone is responsible for

all the claims that are raised earlier and future over the said property and the respondents have no future claims over the above said property either in present or in future.

6 (i) Any of the parties are interested to take out the Raghu Automobiles referred to as Schedule "B" item No.1 they are entitled to do the same and such parties shall pay the goodwill to remaining parties equally or else the respondents 1,4 and 5 and appellant can dispose off to any third party and the consideration so received shall be distributed equally among the respondents 1,4 and 5 and appellant.

(ii) The respondent No.1,4 and 5 and appellant alone are entitled to the revenue i.e., generated to Raghu Automobiles situated at 5-5-505 and 506 at Mojamjahi Market, Hyderabad and the said parties shall also share the liabilities of Raghu Automobiles equally if any.

7. Raghu Agencies referred to as schedule "B" item No.2 has been sold out and no claims from any party for the said item.

8. This compromise being executed and consulted by the consenting parties and they have no objections for the same and this deed of compromise towards full and final settlement of all the claims between all the parties and none of them have rival claims either for the past, present or in future.

9. All the parties from the date of recording of this compromise shall be solely responsible for their respective shares over the said properties and all the parties are barred from making rival claims either past, present or in future.

10. In view of this compromise the appeal shall be dismissed against respondent No.2, respondents 6 to 13 as they are not necessary parties to this compromise and final decree may be passed in favour of respondent No.1,3,4,5, 14 and appellant.

11. The parties hereby agree to bear their own costs throughout."

6. As per the memo of compromise and the sketch annexed to it, the properties to be allotted to each of the sharers have been identified.

7. Therefore, the miscellaneous petition is allowed, and the appeal is disposed of to the following effect:

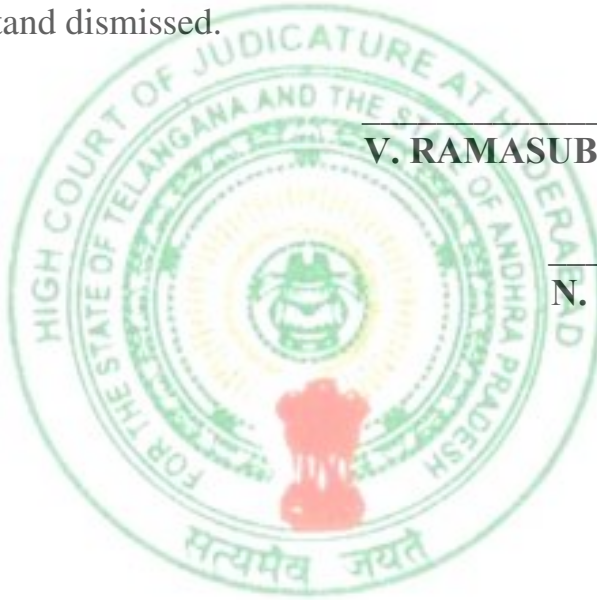
- i. There will be a decree in terms of the memo of compromise.
- ii. Since the memo of compromise and the sketch accompanying the same identify definite properties to be allotted to each of the sharers, there will be a preliminary decree in favour of the appellant and the respondent Nos.1, 3, 4, 5 and 14 to the extent of the shares allotted to them and there will also be a final decree in terms of the memo of compromise.

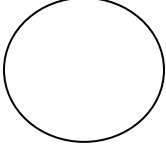
Consequently, miscellaneous petitions if any pending in the appeal shall stand dismissed.

V. RAMASUBRAMANIAN, J

N. BALAYOGI, J

4th July, 2017
cbs





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(petition allowed – appeal disposed of)

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% 04-07-2017

E. Rajender Kumar

.. Appellant

Vs.

\$ E. Raghunandan and others

.. Respondents

<GIST:

>HEAD NOTE:



! Counsel for appellant : Mr. T.S. Anand

^ Counsel for R.1 and R.2 : Mr. V.Hari Haran

^ Counsel for R.3 : Mr. G. Raja Reddy

^ Counsel for R.4 : Mr. C. Damodar Reddy

? CASES REFERRED : ----