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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2018

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THE HONOURABLE MR. JUSTICE M.S.RAMESH

S.A.No.284 of 2012

Shantha Kumari .. Appellant/Appellant/Plaintiff
Vs
S.C.Manickam ..Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of CPC, praying to set aside the judgement and decree dated 10.02.2011 and made in A.S.No.40 of 2010 on the file of the Additional District Judge Fast Track Court No.1, Salem, dismissing the appeal and confirming the Judgment and Decree dated 27.01.2010 and made in O.S.No.207 of 2006 on the file of the learned II Additional Sub Judge, Salem and allow the above second appeal.

For Appellant : Mr.N.A.Nissar Ahmed
For Respondent : Mr.K.Doraisami
for Mr.Muthumani Doraisami

O R D E R

The present Second Appeal is filed to set aside the judgement and decree dated 10.02.2011 made in A.S.No.40 of 2010 on the file of the Additional District Judge Fast Track Court No.1, Salem, dismissing the appeal and confirming the Judgment and Decree dated 27.01.2012 made in O.S.No.207 of 2006 on the file of the learned II Additional Sub Judge, Salem.

2. The plaintiff in the suit is the appellant before this Court. Pending the Second Appeal, both the appellant as well as the respondent are personally present before this Court and they had entered into Joint Memorandum of Compromise dated 19.09.2018, whereby the disputes among the parties have been resolved amicably.

3. The terms of the Joint Memorandum of Compromise dated



19.09.2018 reads as follows:

" 1. It is respectfully submitted that one Shantha Kumari, the Appellant herein, originally filed a suit in O.S.No.207 of 2006 before the 2nd Additional Sub Judge, Salem against S.C.Manickam, the Respondent herein, seeking partition and separate possession with regard to the suit properties. The 1st item of suit property in Survey Nos. 28/4C, 29/4,1/4, 1/10 is situated in Santhiyur Attayampatti village, Salem Taluk. The 2nd item of suit property in Survey Nos. 191/17, 191/18 is situated in Nalikalpatti, Salem Taluk.

2. It is respectfully submitted that the 2nd Additional Sub Judge, Salem, after hearing both parties dismissed the suit for partition filed by the appellant in O.S.No.207 of 2006 on merits by a Judgment and Decree dated 27.01.2010.

3. It is respectfully submitted that aggrieved by the Judgment and Decree made in O.S.No.207 of 2006 dated 27.01.2010 by the 2nd Additional Sub Judge, Salem, the appellant herein filed an appeal in A.S.No.4 of 2010 before the Additional District Judge, Fast Track Court No.1, Salem. The appeal filed by the appellant in A.S.No.4 of 2010 was also dismissed by the Additional District Judge, Fast Track Court No.1, Salem, by a Judgment and Decree dated 10.02.2011, confirming the Judgment and Decree made in O.S.No.207 of 2006 dated 27.01.2010 by the 2nd Additional Sub Judge, Salem.

4. It is respectfully submitted that aggrieved by the Judgment and Decree made in A.S.No.4 of 2010 dated 10.02.2011 by the Additional District Judge, Fast Track Court No.1, Salem the appellant herein, filed the above second Appeal in S.A.No.284 of 2012 before this Hon'ble court.

5. It is respectfully submitted that pending Second Appeal before this court, the Appellant and the Respondent herein, who are sister and brother, on the advice of the family elders and well wishers, have decided to settle the dispute amicably by entering into compromise.

6. It is respectfully submitted that the appellant herein after accepting Rs.30,00,000/- (Thirty Lakh Rupees only) on her behalf and behalf of her legal heirs give up all claims over the suit properties. Further, the appellant and her legal



heirs will not claim any share, right, title, enjoyment or whatsoever over the suit properties in the future. This joint memorandum of compromise will bind the legal heirs of the appellant also.

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7. It is respectfully submitted that the appellant herein accepts that the Judgment and Decree made in A.S.No.4 of 2010 dated 10.02.2011 on the Additional District Judge, Fast Track Court No.1, Salem, confirming the Judgment and Decree made in O.S.No.207 of 2006 dated 27.01.2010 on the file of the 2nd Additional Sub Judge, Salem, as valid in law and the appellant agrees to abide by the same.

8. It is respectfully submitted that the title of the Respondent over the suit properties is hereby affirmed.

9. It is respectfully submitted that it is agreed by all the parties in the above second appeal in S.A.No.284 of 2012 that this Joint Memorandum of Compromise will be binding upon all the parties to the above Second Appeal and their respective heirs and successors in interest and no other documents or arrangements, if executed by any of the parties shall affect the rights of the Respondent herein in respect of the suit properties.

10. It is respectfully submitted that a sum of Rs.30,00,000/- (Thirty Lakh Rupees Only) will be paid to the Appellant by the Respondent at the time of recording the joint memorandum of compromise in open court. In that Rs.15,00,000/- (Fifteen Lakh Rupees) is paid through three Demand Drafts in D.D.No.752524 dated 04.09.2018 issued by State Bank of India, Gajalnaickenpatti Branch and D.D.Nos. 220983 & 220982 dated 05.09.2018 issued by Tamil Nadu Mercantile Bank, 286 Dasanaickenpatti Branch in favour of Respondent, i.e) SanthaKumari and remaining Rs.15,00,000/- (Fifteen Lakh Rupees) is paid through cash in open court.

11. It is made clear that no property other than the suit schedule property has been included in this Joint Memorandum of Compromise.

12. Under these circumstances, it is therefore most humbly prayed that this Honourable Court may be pleased to record this Joint Memorandum of Compromise and dismiss the above Second Appeal in S.A.No.284 of



2012 and thus render justice."

4. Recording the terms of the Joint Memorandum of Compromise dated 19.09.2018, the Second Appeal stands dismissed. No costs. The terms of the Joint Memorandum of Compromise, dated 19.09.2018 entered into between the appellant and respondent herein shall form part of the decree.

dh

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Judge,
Fast Track Court No.1,
Salem.
2. The II Additional Sub Court,
Salem.

+1cc to Mr.N.A.Nissar Ahmed, Advocate, SR.No.65569
+1cc to M/s.Muthumani Doraisami, Advocate, SR.No.65408

S.A.No.284 of 2012

Kak(26/04/2019)