

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2018

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.S.No. 580 of 2016

And

O.A.No. 697 of 2016

1. A.John Mohamed kose
2. Raja Mohamed kose

... Plaintiffs

Vs.

S.Rahamathullah

... Defendant

PRAYER: This Civil Suit filed under Order IV Rule 1 of O.S. Rules read with Order VII Rule 1 CPC, praying for the following reliefs:

(a) for a declaration, declaring that the plaintiffs are the absolute owners, of the "B" schedule suit property which is more fully described in the Schedule "B" to the plaint;

(b) For a mandatory injunction directing the defendant to demolish the illegal construction and structures put up in the Suit "B" schedule property which is more fully described in the "B" schedule hereunder.

(c) For a permanent injunction restraining the defendant, his men, agents, servants or anyone claiming under him or acting on his behalf, in any manner

whatsoever from interfering with the Plaintiff's peaceful possession and enjoyment of the suit "B" schedule property which is more fully described in the schedule hereunder;

For Plaintiffs : Mr.B.Vijay

For Defendant : Mr.R.Abdul Mubeen

JUDGMENT

The plaintiffs and the defendant were referred to the Mediation and Conciliation Cell to settle the issues. With the assistance of the Mediator, Dr.Kishor Raja Gopal, the parties had settled the issues. The terms of the settlement have been incorporated in the compromise Memorandum of understanding dated 04.12.2017 and entered into between the first and second plaintiffs on the one hand and the defendant on the other hand.

2. According to the terms of compromise, the parties had agreed as

follows:-

"1. The first and second part and their respective counsels have inspected, measured and surveyed "B" schedule property of the plaint on 21.08.2017 with the assistance of Private Engineer and arrived a conclusion

that the "B" Schedule property falls within the territory of 1st part and it is to the extent of 44 Sq Ft. only.

2. The both parts have agreed that the linier measurements and boundaries and extent of "B" schedule property are as mentioned hereunder:

East to West on the North Side 11 Feet
East to West on the South Side 11 Feet,
North to South on Eastern side 4 Feet
North to South on Western side 4 Feet
Bounded on
North By; Plaintiff Property
South By; Defendant Property
East By; R.S.No.2657
West By; Sydoji Lane – R.S.No.2674; totally admeasuring to an extent of 44 Sq. Ft.

3. The 2nd part of this MOU has agreed that the aforesaid said "B" schedule property belongs to 1st part as per the clause No.1 and Second part has also agreed that he has no manner of title, right and interest upon the party. Second party admits that he will not claim any right upon the aforementioned property described in Clause 2 of this memorandum in future.

4. The 2nd part has agreed that the "B" schedule property which is mentioned in clause No.2 is to be absolutely belonged to 1st part and also agreed that the

ground floor of the "B" schedule property shall be possessed by 1st part and physical possession of 1st floor of the "B" schedule property will be handed over to 1st part by the 2nd part which is being used as toilet.

5. the 2nd part has agreed that he and his men, servants, sub agents or any other person claiming any rights through him, shall not put up any further construction and not to disturb the peaceful possession and enjoyment of 1st part in the "B" Schedule property which is mentioned in clause No.2 of this MOU.

6. The 1st part of this MOU has agreed to pay a sum of Rs.88,000/- (Eighty Eight thousand only) by way of cheque bearing No.403725 dated 04.12.2017 Andhra Bank, Triplicane Branch to the second part towards the construction put up by the 2nd part in the "B" Schedule property as suggested by 2nd part.

7. The first and second part have agreed that the wall erected on the East to West on the Southern Side of 11 Feet in property described in clause 2 of this memorandum, is common wall for both parts. It is pertinent to mention here that the aforesaid wall is the boundary line for the properties of the both the parts. The first and second part are mutually agreed, the aforesaid is the common wall for both parts in future.

8. The first and second parts have mutually agreed

that they will not demolish the common wall which is mentioned in clause No.7 in future.

9. The first and second part have mutually agreed that the earlier MOU dated 06.07.2011 entered between first and second part which is document No.6 of the plaint is quashed by this clause. No claim will be made by means of the earlier MOU dated 06.07.2011 by the both parts.

10. The 1st part of this MOU has agreed that he will not cause any damage to the foundation beam and pillar of the common wall which is mentioned in the clause No.7 of this MOU.

“B” SCHEDULE PROPERTY

East to West on the North Side 11 Feet

East to West on the South Side 11 Feet,

North to South on Eastern side 4 Feet

North to South on Western side 4 Feet

Bounded on

North By; Plaintiff Property

South By; Defendant Property

East By; R.S.No.2657

West By; Sydoji Lane – R.S.No.2674; totally admeasuring to an extent of 44 Sq. Ft.

C.V.KARTHIKEYAN , J.

vsg/mm

3. In view of the same, the suit is decreed as agreed by the parties and as settled by them before the Mediation and Conciliation Cell. No costs. Consequently, connected Original Application is closed.

vsg/mm

26.02.2018

Note: Office is directed to draft a decree merely stating that the suit is decreed as settled during the mediation cell. If it is permissible according to the rules, the entire Court fee is to be refunded to the plaintiff on proper identification and acknowledgement.

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