

In the High Court of Judicature at Madras

Dated : 28.04.2018

Coram

The Honourable Mr.Justice R.SUBBIAH
and
The Hon'ble Mr.Justice P.D.AUDIKESSAVALU

A.S.No.471 of 2013
and
M.P.No.1 of 2013 and M.P.No.1 of 2014

Dhanasekar
S/o Late T.C.Sitaraman ...1st Defendant/ Appellant

..vs..

1. Bhagyalakshmi, (Died)
D/o T.C.Sitaraman

(1st respondent died, recorded
as per memo dated 25.4.2018
by RPSJ & PDAJ)

2. S.Kalyani,
W/o V.Gurunadhan

3. S.Sivagami,
D/o T.C.Sitaraman ...Plaintiff/Respondents 1 to 3

4. The Sub-Registrar,
Sub Registrar Office,
Ashok Nagar,
Chennai - 600 083. ...2nd Defendant/4th Respondent

Appeal Suit has been filed under Order XI, Rule 1 r/w
Section 96 of the Civil Procedure Code against the judgment and
decree dated 24.07.2013 passed by the learned VI Additional City
Civil Judge, Chennai, in O.S.No.6259 of 2011.

For Appellant : Mr.D.Jaganathan

For Respondents: Mr.S.Rajesh
for R2 & R3
Mr.J.Balagopal,
Special Government Pleader for R4
R1- died

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J.)

The appellant herein is the 1st defendant in O.S.No.6259 of 2011, on the file of the learned VI Additional Judge, City Civil Court, Chennai. The respondents 1 to 3 herein have filed the aforesaid suit against the appellant/1st defendant and 4th defendant for the following reliefs:

"To pass a judgment and preliminary decree:

(a) for partition and separate possession of Plaintiff's 3/4th share in the suit property more fully described in the schedule hereunder;

(b) for appointment of an Advocate Commissioner to divide the suit property by metes and bounds and for allotment of the plaintiff legitimate 3/4th share in the suit property;

(c) restraining the 1st defendant from alienating the plaintiffs 3/4th share in the suit property;

(d) for future mesne profits;

(e) for the costs of the suit."

2. Today, when the matter is taken up for consideration, it is reported that the matter was compromised between the parties and a memorandum of compromise executed by the appellant, 2nd respondent and 3rd respondent was filed and both the parties have signed the same. Both appellant/1st defendant and the respondents 2 & 3/plaintiffs 2 & 3 appeared in person. The memo of compromise dated 27.04.2018 was signed by them along with their respective learned counsel on record, to that effect. When we enquired the parties about the factum of compromise and the terms of the compromise, they have admitted the same. We also perused the Memo of Compromise dated 27.04.2018 signed by both the parties. The terms of the said Memo of Compromise read as follows:

"Whereas the 1st to 3rd parties herein and one who deceased namely Mrs.S.Bhagyalakshmi (who died on 20.09.2017) are the legal heirs of Late S.Menaka who is the mother of the parties.

(i) The said late S.Menaka who is the mother of the parties herein died intestate on 27.08.2000 and she was the absolute owner of the property vide document No.59/1986 on the file of SRO Kodambakkam situate at land and building Ground, First and Second Floor located at No.1, Bajanai Koil Street, Ashok Nagar, Chennai - 600 083, compromised in Survey No.93, Town Survey No.71, Block No.11, Mambalam-Guindy Taluk, Kodambakkam Village, admeasuring an extent of 1650 sq.ft. The father of the parties late T.C.Sitaraman who died on 03.01.2002.

ii) Whereas the respondents 2 and 3 herein and the deceased S.Bhagyalakshmi filed a partition suit

against the appellant herein before the Hon'ble VIth Additional City Civil Court at Chennai in O.S.No.6259/2011 and in the said suit preliminary decree of partition were passed by the Hon'ble VIth Additional City Civil Court at Chennai by a Decree and Judgment dated 24.07.2013 against which the present First Appeal has been filed by the Appellant herein.

iii) Whereas during the pendency of the First Appeal the 1st respondent namely Bhagyalakshmi died intestate and issueless on 20.09.2017 due to ill health. Moreover, apart from the above parties herein, no other legal heirs.

iv) Whereas pending the Appeal in A.S.No.471/2013 to resolve the dispute out of the Court between the parties, the parties herein executing this memorandum of Compromise on the terms and conditions more particularly set out hereunder:

a) It is mutually agreed and admitted by the 2nd and 3rd Parties herein i.e., 2nd and 3rd respondents in this Appeal that the Appellant herein alone is the absolute owner of the above said property situate at land and building Ground, First and Second Floor located at No.1, Bajanai Koil Street, Ashok Nagar, Chennai - 600 083, comprised in survey No.93, Town survey No.71, Block No.11, Mambalam-Guindy Taluk, Kodambakkam Village, admeasuring an extent of 1650 sq.ft.

b) Whereas these parties i.e., Appellant and 2nd and 3rd respondents herein accepts this Compromise and the 2nd and 3rd respondents relinquished all their rights pertaining to the suit property. And further relinquished their rights conferred on them pertaining to the preliminary decree dated 24.07.2013 in O.S.No.6259/2011 favour of the Appellant. Hence hereinafter there is no dispute between all the parties and the Appellant is the absolute owner of the suit property specified in the schedule hereunder.

c) The 1st party (Appellant) agreed to pay a sum of Rs.42,00,000/- (Rupees Forty Two Lakhs only) to the 2nd party Mrs.Kalyani (2nd Respondent). The 1st party/ Appellant release a sum of Rs.42,00,000/- (Rupees Forty Two Lakhs only) by way of cheque vide: Cheque No.000788 dated 27.04.2018 drawn on

Central Bank of India, Ashok Nagar Branch,
Chennai -83.

d) The Appellant being the elder brother of 3rd Respondent namely Miss.S.Sivagami, he agrees and undertake to arrange marriage as per Hindu Custom and also agreed to pay a sum of Rs.42,00,000/- (Rupees Forty Two Lakhs only) to 3rd respondent (Miss.S.Sivagami) by way of cheque vide: Cheque No.000789 dated 27.04.2018 drawn on Central Bank of India, Ashok Nagar Branch, Chennai - 83.

e) Whereas the 2nd and 3rd Respondents on receipt of the above amount on free state of mind hereby consented that they have NO OBJECTION to issue Patta, Electricity, Metro and Sewerage Water Connection, Planning permission and etc., in respect of the above said property in the name of Mr.S.Dhanasekar, the Appellant herein.

f) In view of the above terms of compromise, a decree and judgment in O.S.No.6259/2011 passed by the Hon'ble VIth Additional City Civil Court at Chennai may be set aside and this Hon'ble Court passed degree and Judgment on the basis of this Compromise Memo and this Compromise Memo may be treated as part and parcel of decree. That apart, the Respondents 2 and 3 also agree and consented to give full co-operation to register this memo of compromise before the SRO Ashok Nagar i.e., 4th Respondent herein in accordance with law.

Therefore, it is humbly prayed that this Hon'ble Court may be pleased to record this Memorandum of Compromise and pass such further order or other order as this Hon'ble Court may deem fit and proper in the circumstance of the case and thus render Justice."

3. Recording the same, the judgment and decree passed by the VIth Additional City Civil Court at Chennai are set aside and the Appeal Suit is allowed in terms of the aforesaid memo of compromise dated 27.04.2018 entered into between the parties. The memo of compromise dated 27.04.2018 shall form part of the decree. The Registry is directed to refund the court fee to the

learned counsel for the appellant as contemplated under Section 69A of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The VI Additional City Civil Judge, Chennai.

2. The Sub-Registrar,
Sub Registrar Office,
Ashok Nagar, Chennai - 600 083.

+1 CC to Mr.D. Jaganathan, Advocate sr 32102.

A.S.No.471 of 2013

PVS (CO)
SP(09/05/2018)



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