

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2018

CORAM:

THE HON'BLE JUSTICE C.V.KARTHIKEYAN

TOS No. 2 of 2003

and

Tr.C.S. No. 669 of 2004TOS No. 2 of 2003

S. Elangovan

..

Plaintiff

..Vs..

1. S. Parivallal

2. S. Kalaiselvi

..

Defendants

Tr.C.S. No. 669 of 2004

1. S. Kalaiselvi

2. S.Saraswathi

3. S.Parivallal

(Plaintiffs-2 & 3 are impleaded as per Order of Court dated 19.08.2010, made in A.No.1758/2010 in Tr.C.S.No.669/2004) and

(The plaintiffs-1 & 3 are recognized as L.Rs of the deceased 2nd plaintiff as per Order of Court dated 18.12.2015 made in A.No.5587 of 2015).

4. Mangala Gowri

(The 4th plaintiff was impleaded & brought on record as "Defendant-3" as per Order of Court dated 18.12.2015 as she is the LR of the deceased

plaintiff-2 made in A.No.5588 of 2015) and
 (The 3rd defendant (i.e., 4th plaintiff) was transposed
 as 4th – Plaintiff from her rank as “Defendant-3” as
 per Order of Court dated 03.02.2016 made in
 A.No.469/2016).

... Plaintiffs

..Vs..

1. S. Elangovan

2. R. Gunaselvan

... Defendants

TOS No. 2 of 2003

For Plaintiffs : M/s.S. Senthilnathan

For Defendants-1 & 2 : Mr.S. Mani

Tr.C.S. No. 669 of 2004

For Plaintiffs : Mr.S. Mani

For Defendant-1 : M/s.S. Senthilnathan

सत्यमेव जयते

PRAYER : Plaint has been filed Under Order XXXIII Rule 1 of Civil Procedure code, (a). permanent injunction restraining the defendants 1 and 2 from registering the sale deed in respect of the suit schedule property either themselves or claiming through them or their men, agents, servants, representatives in any manner whatsoever either directly or indirectly; (b). for a decree of partition of the suit property more fully described in the schedule hereunder by dividing the same in 4 equal shares and allot 3/4th share to the plaintiffs – 1, 3 and 4 (i.e., each of the plaintiffs – 1,3 and 4 are entitled 1/4th share) and the remaining 1/4th share to the 1st defendant herein by meets and bounds

(c). directing the defendants to pay to the plaintiffs the costs of the suit and (d). for such further or other reliefs.

J U D G M E N T

Tr.C.S. No.669 of 2004 had been filed seeking the relief of permanent injunction, partition in the Suit property.

2. The plaintiff Elangovan and the defendants S.Parivallal and S.Kalaiselvi in TOS No.2 of 2003 and the plaintiffs S.Kalaiselvi, S.Parivallal and S.Mangala Gowri and the first defendant S.Elangovan in Tr.C.S.No.699 of 2004 are present.

3. The 2nd defendant in the said suit namely R.Gunavalan is a tenant and therefore not necessary party in the proceedings. The plaintiffs and defendants are present. A detailed memo of compromise has been presented today in the Court signed by all the four plaintiffs and all the two defendants in each and every page and also by the learned counsel for the plaintiffs and learned counsel for the defendants.

4. The terms of memorandum of compromise are recorded which are as follows;

"1. It is submitted that S.Elangovan the Plaintiff in TOS. No. 2 of 2003 has filed the above suit for Letters of Administration in respect of Will dated 20.08.1991 executed by his father A.SUndarachari @ Sankarachari and registered as Document No.75 of 1991, in the Office of the Sub-Registrar, Sembiam, thereby claiming entire suit property for himself as per the aforesaid Will. The testator A.Sundarachari @ Sankarachari died on 11.02.1994.

2. It is submitted that R.Kalaiselvi and 3 others, the Plaintiffs in Tr.C.S.No.669 of 2004 have filed a suit claiming partition in the suit property against S.Elangovan the 1st defendant in the above suit. The 2nd defendant is a tenant in the suit property and he has no right over the suit property. Now both suits are compromised hereunder.

3. The parties in this compromise memo are referred as per the rank of the parties given in Tr.C.S.No.660 of 2004 for the sake of convenience.

4. The parties hereto have come to the conclusion that it is impossible to divide the suit property by metes and bounds in view of the lesser extent of the suit property and hence the parties hereto have unanimously decided to sell the suit property to third parties at the best market price and divide the sale proceeds as detailed hereunder:-

S.No.	NAME OF THE PARTIES	RANK AS IN Tr.C.S.No.669 of 2004	PROPORTIONATE SHARE IN SALE PROCEEDS
1.	R.KALAISELVI	1 st Plaintiff	20%
2.	S.PARIVALLAL	3 rd Plaintiff	25%
3.	S.MANGALA GOWRI	4 th Plaintiff	15%
4.	S.ELANGO VAN	1 st Defendant	40%

5. It is submitted that in the registered Will dated 20.08.1991 executed by A.Sundarachari @ Sankarachari, it is mentioned that Rs.30,000/-has to be paid to each of the grand daughters of the testator namely Kalpana and Kavitha by S.Elangovan the 1st defendant herein. In view of the compromise arrived at it has been unanimously agreed between all the parties hereto that the aforesaid amounts shall be settled from and out of the sale proceeds and the same shall be shared equally by all the parties excluding S.Parivallal. In effect all the parties to this compromise memo excluding S.Parivallal shall equally contribute their respective share and settle the amounts to the aforesaid Kalpana and Kavitha, the granddaughters of Late.A.Sundarachari @ Sankarachari.

6. It is submitted that since S.Kalaiselvi and S.Mangala Gowri are given share in the suit property, no money is paid to them as mentioned in the Will dated 20.08.1991 executed by A.Sundarachari @ Sankarachari.

7. It is submitted that all parties shall co operate and sell the suit property as quickly as possible at a best fetching market price.

8. Therefore, it is prayed that this Hon'ble Court may be pleased to record the Joint Compromise Memo in TOS No.2 of 2003 and Tr.C.S.No.669 of 2004, both on the file of this Hon'ble Court and pass Judgment and Decree in terms of this Joint Compromise Memo and pass such further or other orders and thus render Justice.

SCHEDULE

All that piece and parcel House, Ground and Premises Plot No.44, Door No.8, Bunder Garden 1st Street, Perambur, Chennai – 600 011, comprised in Survey Nos.3 & 7/1 of Siruvallur Village, Perambur Taluk, Chennai District, land measuring 1600 Sq.ft along with building thereon and bounded on the :-

North by :	Plot No.45
South by :	Plot No.43
East by :	Plot No.35
West by :	Property of K.Hemalatha and Bunder Garden 1 st Street."

6. In view of the memo of compromise, Tr.C.S.No.699 of 2004 is dismissed and TOS No.2 of 2003 is also dismissed, in terms of memo of compromise, no costs.

7. The role of Mr.M.S.Mani and Mr.S.Senthilnathan who had used their good offices to bring the above settlement among the parties is deeply appreciated by this Court.

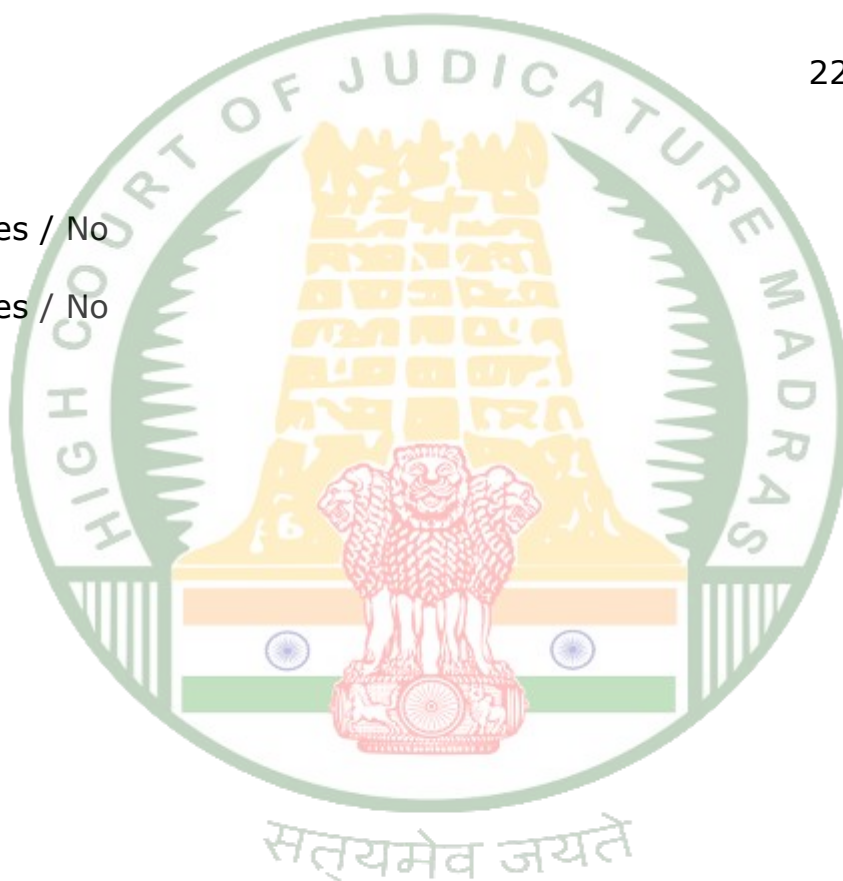
8. The memo of compromise shall form part of the decree. All the connected applications are closed.

22.03.2018

Index : Yes / No

Web : Yes / No

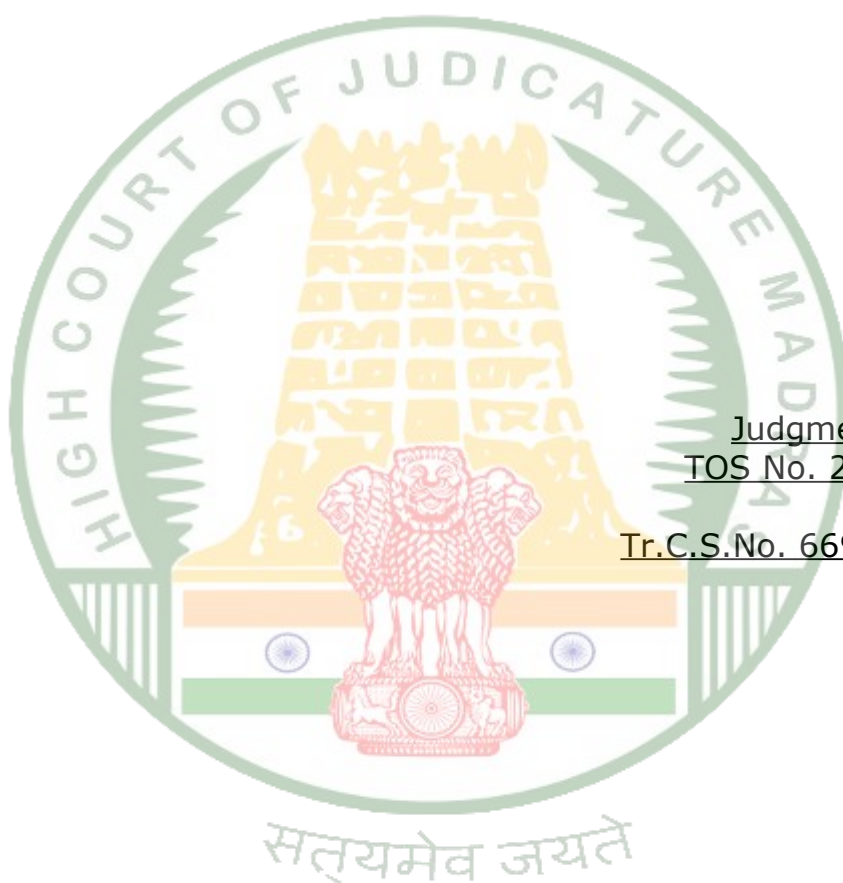
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C.V.KARTHIKEYAN, J

ksa



Judgment in
TOS No. 2 of 2003
and
Tr.C.S.No. 669 of 2004

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