



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2018

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WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.S.A.(MD).No.15 of 2016 and
C.M.P.(MD)Nos.5421 of 2016 & 8142 of 2018

Thangasamy

... Appellant/Appellant/
Petitioner/Plaintiff

Vs.

1. Sundari

... 1st Respondent/Respondent/
Respondent/Petitioner/Plaintiff

2. Jeyamurugan

... 2nd Respondent/Respondent/
Respondent/Respondent/Defendant

PRAYER : Civil Miscellaneous Second Appeal is filed under Section 100 and 108 of the Civil Procedure Code, against the Judgment and Decree dated 23.02.2016 passed in C.M.A.No.9 of 2014 on the file of the learned II Additional District and Sessions Judge, Thoothukudi, confirming the Judgment and Decree dated 30.07.2014 passed in E.A.No.304 of 2011 in E.P.No.106 of 2008 in O.S.No.138 of 2005 by the Sub Court, Thoothukudi.

For Appellant : Mr.M.R.S.Prabhu

For R-1 : Mr.H.Arumugam

For R-2 : Dispensed with.

(Memo filed on 29.09.2016 USR NO 4650)

J U D G M E N T

The first respondent in this Civil Miscellaneous Second Appeal entered into a sale agreement dated 05.07.2005 with the second respondent herein. Since the second respondent did not come forward to fulfill the terms of the agreement, a suit for specific performance was laid by the first respondent by filing O.S.No.138 of 2005 before the Sub Court, Tuticorin. The said suit was decreed ex-parte on 05.12.2006. To execute the same, E.P.No.106 of 2008 was filed by the first respondent. Thereafter, the suit property was sold by the second respondent in favour of the appellant herein. The appellant filed E.A.No.304 of 2011 in E.P.No.106 of 2008 under Order 21 Rule 58 of C.P.C. The same was dismissed on 30.07.2014. Questioning the same, C.M.A.No.9 of 2014 was filed by the appellant. The same was dismissed by Judgment dated 23.02.2016. Questioning the same, this Civil Miscellaneous Second Appeal has been filed.



2. When the matter was taken up for disposal, this Court suggested to the learned counsel on either side to resolve the issue. It appears that the appellant is also a victim at the hands of the second respondent. The contesting parties, namely, the appellant Thangasamy and the first respondent Sundari were present before me and pursuant to the efforts taken by the learned counsel on either side, mainly, the learned counsel for the first respondent, the matter has been amicably resolved. The parties have filed a Joint Compromise Memo. Both the learned counsel have signed in the said Joint Compromise Memo and the same is taken on record. The Joint Compromise Memo forms part of the order.

3. It has been agreed that the amount deposited by the first respondent to the credit of O.S.No.138 of 2005 on the file of the Sub Court, Tuticorin, can be withdrawn by the appellant herein with accrued interest.

4. This Court permits the appellant to take out an application for withdrawal of the said amount and the learned Subordinate Judge, Tuticorin, is directed to allow the same, without notice to the second respondent herein.

5. The appellant has filed I.A.No.17 of 2016 in unnumbered appeal suit, before the Principal District Court, Tuticorin, for return of document. The learned Principal District Judge, Tuticorin, shall allow the said application. The appellant herein shall hand over the same to the first respondent herein, immediately.

6. Even though this Civil Miscellaneous Second Appeal is disposed of in terms of compromise, it is made clear that the order impugned passed by the Court below is confirmed, upholding the right and title of the first respondent over the suit property. The learned counsel for the first respondent is given liberty to make a mention, if the appellant herein does not act in terms of this Joint Compromise Memo.

7. This Civil Miscellaneous Second Appeal stands disposed of, accordingly. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-II)

Enclosure: Xerox Copy of Joint Compromise Memo.

To
<https://hcservices.ecourts.gov.in/hcservices/>
1. The II Additional District and Sessions Judge,
Thoothukudi,



2. The Subordinate Judge,
Thoothukudi.

3. The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.H.Arumugam, Advocate SR.No. 82711

+1cc to M/S.M.R.S.Prabhu, Advocate SR.No. 82719

Judgment made in
C.M.S.A.(MD).No.15 of 2016 and
C.M.P.(MD)Nos.5421 & 8142 of 2016
05.09.2018

pmu

JM/SV/SAR 2/07.09.2018/3P/7C