

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

**THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MS.JUSTICE J. UMA DEVI**

APPEAL SUIT No.1044 OF 2017

Date:20.09.2018

Between:

Aziz ur Rehman Qureshi S/o.late Mohd. Abdul Rehman Qureshi,
R/o. Reti Ki Masjid, Chawan Nade Ali Baig, Yakatpura,
Hyderabad and others.

... Petitioners

v.

Mohammed Jaffer Abdul Qadeer Qureshi
S/o.late Mohd. Abdul Rehman Qureshi,
R/o.Aftab Residency, Opp. Officers Mess
Function Hall, New Malakpet, Hyderabad.

.. Respondent

For Petitioners : Mr. T. Janardhan Rao

For Respondent : Sri K. Srinivas

Gist :

Head Note :

Cases Referred : Nil

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS.JUSTICE J. UMA DEVI

APPEAL SUIT No.1044 OF 2017

JUDGMENT: (*per V. Ramasubramanian, J*)

This appeal arises out of a preliminary decree for partition. The defendants 1, 4 and 5 have come up with the above appeal. During the pendency of the appeal, the appellants who are defendants 1, 4 and 5 have entered into a compromise with (1) the son of the 1st respondent/plaintiff and (2) the respondents 2 and 4, who were defendants 2 and 6. The only party to the proceedings, who has not become party to the compromise, is the 3rd respondent in the above appeal, by name, Moosa Abdul Khader. Notices were sent to him. But, despite service of notice, he has not turned up. Therefore, he is set *exparte* in the above appeal.

2. The parties were present on 30.08.2018 before this Court and have affirmed the terms of compromise. Therefore, the application for recording the compromise under Order XXIII Rule 3 CPC has been allowed today. The Memo of understanding reads as follows:

“MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding executed by and between:

1) Aziz ur Rehman Qureshi S/o Late Mohd Abdul Rehman Qureshi,
Aged 69 years, Occ:Business, R/o. H.No.17-2-27/a, Reti Ki Masjid,
Chawnnade Ali Baig, Yakutpura, Hyderabad

2) Mohd. Ibrahim Khaleelur Rehman Qureshi S/o Late Mohd. Abdul
Rehman Qureshi, Aged 55 years, Occ: Business, R/o. Portion of H.No.22-
3-285, Magar Ki Bowli, Mandi Mir Alam, Hyderabad

3) Shujaur Rehman Qureshi S/o Late Mohd. Abdul Rehman Qureshi, Aged 52 years, Occ:Business, R/o. Portion of H.No.22-3-285, Magar Ki Bowli, Mandi Mir Alam, Hyderabad

4) Mohammed Sami-ur-Rahman Qureshi S/o Late Mohammed Jaffer Abdul Qadeer Qureshi, Aged 59 years, Occ: Business, R/o. H.No.16-3-3991/H/A, Flat No.104, 1st Floor, Aftab Residency, Opp. Officers Mess Function Hall, New Malakpet, Hyderabad

5) Habeebur Rehman S/o Late Mohd. Abdul Rehman Qureshi, Aged 67 years, Occ: Private Service, R/o. Hyderabad

6) Zehra Jabeen Anjum D/o Late Mohd. Abdul Rehman Qureshi, Aged 57 years, Occ:Household, R/o H.No.12-2-819/2, Bait U Zehra, Dilshad Nagar Colony, Reti Bowli, Mehidipatnam, Hyderabad

Witnesseth as follows:

Aktharunisa Begum-Mother of 1 to 3, 5 & 6 and grandmother of No.4 of the parties was the owner and possessor of Ac.54.00 Guntas of land in Sy.No.621 to 624 at Mankal Village, Maheswaram Mandal, Ranga Reddy District.

Md. Jaffer Abdul Qadeer/plaintiff filed the suit O.S.No.1228/2013 on the file of III Addl. District Judge, Ranga Reddy Dist. at L.B. Nagar for partition of Matruka Property –asf “A” “B” “D” “E” Schedules and also of H.No.22-3-285, Magar Ki Bowli, Mandi Mir Alam, Hyderabad – “F” schedule and also for distribution of the movables “G” Schedule property and he has also sought perpetual injunction in respect of “C” Schedule property in the above O.S. The said suit was decreed in part and a preliminary decree was passed in the said suit directing partition of Matruka Land, “F” Schedule property and also granted perpetual injunction in respect of “C” Schedule. The suit was dismissed in respect of the “G” Schedule property.

Md. Jaffer Abdul Qadeer died on 28-4-2018, testate leaving behind a Will dated 05-01-2018 in favour of his son Sami-ur-Rahman Qureshi. Therefore, he is impleaded as respondent no. as L.R. of deceased respondent No.1.

The parties 1 to 3 filed appeal A.S.No.1044 of 2017 on the file of Hon’ble High Court and got suspension orders in respect of “C” Schedule property as there is no road i.e., “C” Schedule property for ingress or egress and not even a pathway.

All the parties to this compromise deed admitted and accepted that H.No.22-3-285, Mandi Miralam, Hyderabad – “F” Schedule was gifted by Aktharunisa Begum to parties 2 & 3 who are Defendants No.4 & 5 in the suit and they are in exclusive possession of said house since prior to the date of gift. All other parties i.e., No.1, 4 to 6 in this compromise deed have no right, title, possession or any right of any nature in respect of said house. They also undertake that neither they nor any one on their behalf file any suit claiming any right in the said house – “F” Schedule property.

It is also agreed that the Schedules ABDE are Matruka properties respecting the judgment and decree of lower Court and all of us agreed to abide by it to the extent of Matruka property. As the Gift Eeds of No.1 & 5 were not recognized by the lower Court, we have treated their gifted lands as Matruka and distributed the sale consideration in the ratio of 2/13 for male and 1/13 for female, though the parties No.1 & 5 registered sale deed in favour of Kandagatla Estate describing it as their Gifted land.

Moosa Abdul Quader and his wife Muneerunnisa Begum have not come forward to register the land though Moosa and his wife received advance of Rs.20,00,000/- (Twenty Lakhs) vide cheque No.216695, dated 27-12-2017 from Kandakatla Estates. He has cheated the purchaser and also brothers and sister by not signing this memorandum of compromise. However he signed on the compromise memo dated 20-4-2018. This compromise and registration of sale deed were delayed due to their adamant attitude. Moosa did not appear either in lower Court or in this Hon'ble Court. This compromise is confined to other members only leaving Moosa Abdul Qadeer.

All the parties undertake that they should hereafter to resolve the problem among themselves shall be decided as per convenience of the parties.

All the sharers without any threat, coercion or undue influence signed and affixed their thumb impression on this deed of compromise in presence of witness.

Hyderabad,
Dt.20-8-2018.

Sd/-
Advocate for Appellants 1 to 3

1) Aziz ur Rehman Qureshi

Sd/-

2) Mohd. Ibrahim Khallel ur Rehman Qureshi

Sd/-

3) Shuja-ur-Rehman Qureshi

Sd/-

Advocate for proposed R.5
L.R. of 1st respondent.

Sd/-

4) Mohammed Sami-ur-Rahman Qureshi (LR of
D1)

Sd/-

5) Habeeb ur Rehman

Sd/-

6) Zehra Jabeen Aum"

The 1st respondent in this appeal filed the suit seeking a partition and separate possession of his share in 7 Schedules of property attached to the plaint. The Trial Court decreed the suit and the decree reads as follows:

"1. That the suit of the plaintiff be and the same is hereby preliminary decreed in part.

2. That there dividing plaint “A”, “B”, “D”, “E” and “F” schedule properties into 13 equal shares.

3. That there allotment of two such shares in the “A” and “B”, “D”, “E” and “F” Schedule properties to the Plaintiff.

4. That the plaintiff is entitled for the relief of permanent injunction restraining the defendants in respect of plaint “C” schedule property.

5. That the claim of the plaintiff for partition of “G” schedule property and also the claim for Rs.3,00,000/- (Rupees Three lakhs only) is dismissed.

6. That the both parties are directed to bear their respective costs.”

The defendants 1, 4 and 5 alone filed the appeal. During the pendency of the appeal, the plaintiff died on 28-4-2018, leaving behind him surviving, his wife by name Rubeena Muneer, two daughters by names Amina Mohd. Jaffer and Sheena Tabassum and a son by name Mohd. Sami-Ur-Rehman Quraishi. All the family members of the plaintiff have now settled the matter with all the defendants except the 3rd defendant.

Though the wife and daughters of the plaintiff are not made parties to the Compromise Memo, they were present in Court and their identities are verified. Under the Memo of Compromise, the suit schedule properties “A”, “B”, “D” and “E” are admitted to be Matruka properties and all the legal heirs of the plaintiff including the son, who is a party to the Compromise, will receive their respective shares as per the Shariat Law. The reason as to why the son of the deceased plaintiff alone has been made a party to the Memo of Compromise is that the deceased plaintiff has executed a Will dated 05-01-2018. The existence of the Will is confirmed by the wife and daughters of the deceased plaintiff. The Will shows that the Will has been attested by them also. In any case, the properties described in Schedules “A”, “B”, “D” and “E” are to be shared among the wife, daughters and son of the plaintiff also insofar as the plaintiff’s share is concerned, therefore there is no conflict of interest between them.

Hence, the Memo of Compromise is accepted.

The presence of the parties is dispensed with.

But before passing a decree in terms of the Memo of Compromise, we direct the appellants viz., the defendants 1, 4 and 5 to issue personal notice to the 3rd respondent returnable in two weeks so that if he does not turn up, a decree in terms of the Memo of Compromise could be passed setting him *exparte*.”

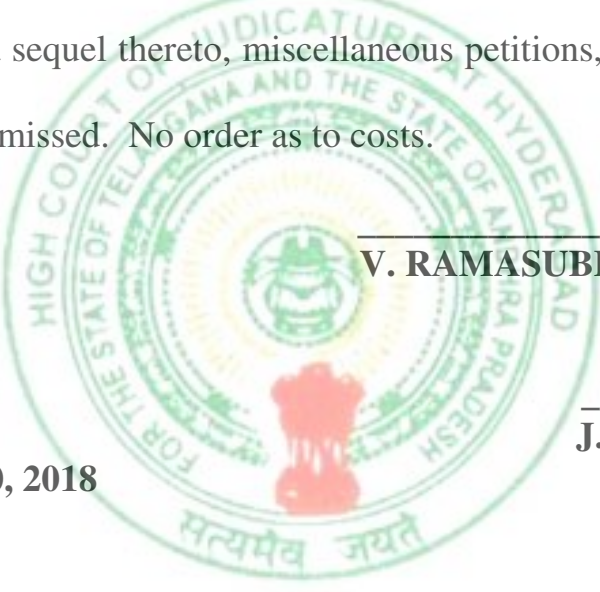
3. In view of the above, the appeal is allowed and the judgment and decree of the trial Court are set aside. There will be a decree to the following effect:

a) There will be a decree in terms of the Memorandum of Understanding entered into between the appellants on the one hand and the legal representative of the 1st defendant and the defendants 2 and 6 on the other.

b) The 3rd defendant in the suit is set *ex parte*.

c) The parties to bear their respective costs.

4. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.



V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

September 20, 2018

KTL