

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CMA. No.3419 of 2012
and
M.P.No. 1 of 2012

1. S.Arumuga Asari
2. A.Saravanan
3. S. Shanmuga Asari
4. S. Venkatachalam
5. Angammal
6. P. Venkatachalam
7. P. Thiyagarajan
8. Indirani
9. Dhanabakkiyam
10. Saroja
11. Sakunthala @ Palaniammal
12. Rajamani
13. A. Ganesan

... Appellants

Vs.

T.A.Kathirvel

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1(D) of Civil Procedure Code, to set aside the Fair and Decretal order dated 17.10.2012 passed in I.A.No. 572/2012 in O.S.No.41 of 2011 on the file of the Principal District Judge, Namakkal.

For Appellants : Mr.G.Arulmurugan
For Respondent : Mr.P. Shivakumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed seeking to set aside the Fair and Decretal order dated 17.10.2012 passed in I.A.No. 572/2012 in O.S.No.41 of 2011 on the file of the Principal District Judge, Namakkal

2.Today, when the matter is taken up for hearing, the learned counsel appearing for the appellant as well as the respondent filed a Memo of Compromise dated 23.10.2019 before this Court.

3. The terms and conditions of the said Memo of Compromise entered into between the parties concerned are extracted below:

MEMO OF COMPROMISE

1. It is respectfully submitted that the appellants have executed a sale agreement dated 20.09.2010 in favour of the respondent agreeing to sell the lands measuring an extent of 4.63 acres of land in Patta No.176, situated in Survey No.222/4 of Minakkal Agraharam Village, Rasipuram Taluk, Namakkal District, the suit schedule property.

2. It is respectfully submitted that praying for specific performance of the agreement dated 20.09.2010, the respondent herein has filed a suit in O.S.No.41 of 2011 on the file of Principal District Court, Namakkal as against the appellants. The suit was decreed ex-parte on 03.12.2011 and the appellants have filed petition in I.A.No.572 of 2012 praying to set aside the ex-parte decree. Since by order dated 17.10.2012 the petition was dismissed, the appellants have filed the above appeal in C.M.A.No.3419 of 2012 before this Hon'ble Court. During the pendency of the above appeal, the 3rd appellant/S.Shanmuga Asari in the above appeal died on 13.05.2014 leaving behind the 4th appellant son and the 9th appellant daughter as his legal heirs, who are already on record in the above appeal. Further pending suit the appellants have also executed a sale deed dated 21.02.2011 in favour of the 12th appellant/Rajamani. Now pending appeal the parties have entered into a compromise and the joint memo of compromise is filed on the following terms:

i. The appellants and respondent mutually agree that they are willing to complete the sale as per the sale agreement entered into between them on 20.09.2010.

ii. The appellants and respondent mutually agree and consent that the appellants can withdraw the entire deposit amount of Rs.27,67,000/- along with the accrued interest thereof which was deposited by the respondent in O.S.No.41 of 2011 on the file of Principal District Court, Namakkal, now the same is in the fixed deposit with Bank of India, Namakkal Branch.

iii. The appellants and respondent mutually agree that the appellants shall abide by the ex-parte decree dated 03.12.2011 passed in O.S.No.41 of 2011 on the file of Principal District Court, Namakkal by cancelling and not pursuing the purported sale deed dated 21.02.2011 in Doc. No.825 of 2011 on the file of the Sub Registrar, Mallasamuthram and thereafter execute the sale

deed in favour of the respondent on the same day on the date of withdrawal of the entire deposit amount of Rs.27,67,000/- along with the accrued interest thereof as mentioned above and in default, the respondent shall be at liberty to proceed with the EP and get the sale deed executed in his favour through Court without any protest or objections from the appellants.

iv. The appellants assures that they will hand over all the original documents and hand over possession of the property immediately on the day of the execution of the sale deed in favour of the respondent.

v. The appellants and respondent mutually agrees that they will withdraw all the cases pending if any instituted against each other in view of the settlement arrived at now.

3. Under these circumstances it's humbly prayed that this Hon'ble Court may be pleased to record the above memo of compromise and dispose of the CMA and thus render justice.

Dated at Chennai on this the 23rd day of October 2019."

4. The said Memo of Compromise dated 23.10.2019 entered into between the parties is recorded and it shall form part of the record. Since there is a settlement arrived at between the parties, nothing survives for consideration in this appeal. Accordingly, the C.M.A.No.3419 of 2012 is disposed of in terms of above said Memo of Comprise dated 23.10.2019. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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Encl:Xerox Copy of Memo of Compromise

To

The Principal District Judge, Namakkal.

+1cc to Mr.G.Arul Murugan, Advocate, S.R.No. 88900

+1cc to Mr.D.Shiva Kumaran, Advocate, S.R.No. 88658

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