

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28..02..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Second Appeal No.137 of 2016
and
C.M.P.No.2814 or 2016

Suchitra ... Appellant/Defendant

-Versus-

Sivakaran ... Respondent/Plaintiff

This second appeal is filed against the judgment and decree dated 07.07.2015 made in A.s.NO.90 of 2014 by the learned I Additional Subordinate Judge, Erode, confirming the decree and judgement dated 15.10.2014 made in O.S.No.632 of 2011 by the learned II Additional District Munsif, Erode.

For Appellant : Mr.T.Murugamanickam

For Respondent : Mr.G.Ethirajulu

JUDGMENT

The sole defendant in O.S.No.632 of 2011 on the file of the II Additional District Munsif, Erode, is the appellant herein. The sole plaintiff is the respondent in this second appeal. The suit was filed against the appellant for permanent injunction restraining him, his men, or agents from interfering with the respondent's peaceful enjoyment of A-schedule common passage or from alternating the physical character of the passage; for mandatory injunction against the appellant to remove the wall put up on the B-schedule property and also for mandatory injunction against the appellant to reinstall the lift, which was in operation, on the B-schedule property. By judgement dated 15.10.2014, the trial court had decreed the suit. Aggrieved by the same, the defendant preferred an appeal in A.S.No.90 of 2014 which was dismissed by the leaned I Additional Subordinate Judge, Erode. Further aggrieved by the same, the defendant is before this court with this second appeal.

2. On notice, the respondent had entered appearance through a counsel. When the second appeal was taken up for hearing, the learned counsel for the appellant and the learned counsel for the respondent submitted that pending second appeal, the parties have settled the matter amicably between themselves and entered into a compromise. Today, a joint memo of compromise reduced into writing and signed by both the appellant and the respondent and the counsel for the respective parties has also been filed.

3. I have heard the learned counsel on either side.

4. The appellant and the respondent were present in court. On inquiries, they had submitted that the matter was compromised as enumerated in the compromise memo. They further prayed this court that appeal may be dismissed recording the joint memo of compromise. The learned counsel on either side have also confirmed the same. The terms of compromise entered into between the parties in writing read as follows:-

"(i) As per the partition and subsequent ratification deed, the respondent is entitled to use common area, parking place in the ground floor, the lift on the western side and the toilets, bathrooms with passage on the eastern side of the first and second floor of the A and C Schedule of properties.

(ii) The appellant agrees to remove the materials and extension of the appellant's shops made in the portion where the lift was originally situate, and modify the said portion an extent of 58.97 sq.ft., each in the ground floor and first floor by removing the permanent roof top put up by the appellant in the ground, first and second floor within 8 weeks from the date of execution of this Memo. The cost of removal shall be borne by the appellant.

(iii) Both parties shall endeavor to obtain quotation for re-installation of the goods lift and for this purpose the appellant leave passage from ground floor to Second Floor to remove the permanent front wall erected in the ground, first and second floor in order to facilitate running of lift for the purpose of loading, unloading and moving the materials and goods from the ground floor, first floor and second floor.

(iv) The lowest quotation among standard quality goods lift and other ancillaries shall be accepted by both parties and there upon both parties shall tender their equal respective shares to the contractor agreed between the parties for re-installation of the goods lift, and both

parties shall extend all co-operation for complete installation of the lift on or before 30.05.2019. The respondent undertake to instal goods lift on receipt of payment of half share from the appellant.

(v) Future maintenance of the goodslift and electricity charges for the goods lift and common areas shall be borne by both parties and both parties shall be jointly responsible for all acts and omissions thereof.

(vi) The appellant agrees to finish the work within the stipulated period as per clause (ii) of this Joint Memo of Compromise failing which the judgement and decree passed by the Courts below would be restored."

5. Recording the joint memo of compromise, this second appeal is dismissed. The joint memo of compromise shall form part and parcel of the decree. No costs. Consequently, connected CMP is closed.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

kmk

To

1.The I Addl. Subordinate, Erode, Erode District.

2.The II Addl. District Munsif, Erode, Erode District.

+1cc to Ms.Zeenath Begum, Advocate SR.No.18713

+1cc to Mr.G.Ethirajulu Advocate SR.No.19652

Second Appeal No.137 of 2016

KK (CO)
GMY (13/03/2019)