

3IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-12-2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.20 of 2017
and
C.M.P.No.744 of 2017

D.Balakrishnan .. Appellant/Defendant No.1

vs.

1.D.Shantha
2.D.Purushothaman ... R-1&R-
2/Plaintiffs
3.D.Amirthavalli
4.D.Janaki
5.D.Thiruvankadam
6.D.Parangusam
7.D.Rukmani
8.D.Parthiban
9.D.Sundari ... R-3 to R-9/Defendants 2to8

First Appeal is filed under Section 96 of the Code of Civil Procedure read with Order 41, Rule 1 of the Code of Civil Procedure, against the judgment and decree dated 17.08.2016 made in O.S. No.6545 of 2012 on the file of the XV Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.T.Dhanasekaran

For Respondents-1&2 : Mr.A.Palaniappan

For Respondents-3to9 : Mr.M.Devendran

J U D G M E N T

The appeal suit is filed against the judgment and decree dated 17.08.2016 passed by the learned XV Additional Judge, City Civil Court, Chennai, in O.S.No.6545 of 2012, which is a suit for partition.

2. The first defendant filed the appeal suit claiming the additional share by questioning the preliminary decree passed by the Trial Court. However, the parties have decided to compromise the issues and with the cooperation of the learned counsel appearing on behalf of the appellant and the learned counsel appearing on behalf of the respondents and in order to reach an amicable settlement, all the parties to the appeal suit are present before this Court today and consented for the compromise, which is reduced in writing and the said compromise memo is signed by the parties to the appeal suit, which is extracted as under:-

"MEMORANDUM OF COMPROMISE FILED UNDER ORDER
XXIII RULE 3 OF CPC

The Memorandum of Compromise filed by the appellants and the respondents in the appeal jointly are as follows:-

(1) That the appellant and the respondents are brothers and sisters respectively, being sons and daughters of V.Damodara Naicker and Mrs.Andalammal. That the said appellant and respondents admit that the entirety of the property are self acquired property of their father V.Damodara Naicker. That the said Damodara Naicker had died intestate on 27.01.1968 leaving behind the aforesaid persons as his legal heirs were each entitled to a share in respect of the property of their father.

(2) The suit for partition was filed by the first and second respondents in the appeal as against the other respondents seeking for the following reliefs:- (1) for passing of a preliminary decree for partition by division of the immovable property being schedule mentioned property equally into 10 shares by metes and bounds and thereon allot to the plaintiffs and the defendants one share each. (2) for appointment of Advocate Commissioner to identify such of those properties which are divisible by metes and bounds and thereon divide the suit schedule property by metes and bounds in accordance with the preliminary decree and such of those properties which cannot be divided equally as between the parties to the suit, the value property of the suit schedule can be taken into consideration and accordingly the property shall be distributed equally as between the respective plaintiff to the suit by effecting partition of the properties in

terms of the preliminary decree.

(3) In the event of any item of the suit schedule property not being able to be divided by metes and bounds or be allotted equally as between the plaintiff in terms of the criminal decree as aforesaid, the same shall be sold in accordance with law and the sale proceeds shall be shared equally as between the parties to the suit in terms of the preliminary decree.

(4) The suit for partition was decreed on 17.08.2016, on merits by the Trial Court. The preliminary decree for partition is granted as prayed for with regard to division of properties by appointing Advocate Commissioner and also to sell the indivisible properties if any and divide the overties into equal shares are to be decided at the time of passing of the final decree.

(5) The appellant and the respondents hereby agree to the following terms of compromise arrived in the appeal:-

1. The suit schedule properties shall be divided by metes and bounds and the suit properties shall be divided into 10 equal shares one such share shall be allotted to each of the plaintiffs and defendants as stipulated in the preliminary decree.

2. It is expressly agreed as between the appellants and the respondents herein that respect of the division of Schedule A property alone by metes and bounds, which is totally compromise of 3640 square feet the appellant herein/first defendant shall be allotted the share of 364 square feet plus an additional extent of 75 square feet and the remaining extent of the Schedule A property shall be equally divided by all the respondents herein.

3. Such of those properties in the B Schedule which cannot be divided by metes and bounds the value of the property shall be arrived by the Advocate Commissioner and the properties shall be allotted in wholesome or in aggregation based upon equal division arrived on the value of the property.

4. Such of those B Schedule properties which cannot be divided by the metes and bounds or allotted in wholesome or in aggregation based on equal division

arrived on the value of the properties allotted, in such circumstances by the Advocate Commissioner shall effect sale of those properties and the sale proceeds shall be divided equally as among the appellant and the respondents in equal shares according to the preliminary decree.

5. That the final decree application shall be filed by anyone of the parties to the aforesaid appeal, and an Advocate Commissioner shall be appointed by the Trial Court for dividing the property by metes and bounds or such other mode as agreed upon in the compromise and shall file a report to the Trial Court based upon which the Trial Court shall pass the Final Decree for partition.

6. That the final decree application shall be disposed by the Trial Court in terms of the compromise arrived between the parties within time frame of six months based upon the compromise arrived between the parties.

7. All the parties to the compromise shall cooperate in the final decree petition for division of the suit properties by metes and bounds or by wholesome based on value or sale of the suit property as the case may be for earlier disposal of the final decree petition.

8. That the compromise shall be treated as part and parcel of the judgment and decree passed by this Honourable Court in the appeal and the same shall be given effect by the parties to the suit in letter and spirit.

9. The compromise has been arrived between the parties mutually of their own free will and accord and the same shall not be re-agitated or questioned by the parties to the suit for any reason whatsoever.

SCHEDULE OF PROPERTY

SCHEDULE ITEM NO.'A' House, ground and premises, situated in Old Door No.47, New Door No.101, New Street, Mylapore compromised in RS No.2878/3 (Part) together with superstructure thereon, bounded on the North by: property situated in Old Door No.42, New Door No.87, New Street, belonging to Paravatham, South by: Old No.48, New Door

No.103, New Street, property belonging to Matilda Stephen, East by: New Street, West by: property bearing Old Door No.29, New Door No.76, Thachi Arunachalam Mudali Street, property belonging to V.Swaminathan and S.Krishnan.

Property measuring

East to West on the Northern side-104 feet

East to West on the Southern side-104 feet

North to South on the Eastern side-35 feet

North to South on the Western side-35 feet

admeasuring 3640 sq.ft.

Property situated within the registration limits of Mylapore Sub Registrar's office within the Central Chennai Registration District.

SCHEDULE ITEM NO.'B' All that piece and parcel of agricultural land comprised in the following survey numbers and corresponding extent the property situated in Nallur Village, Thirukazhukundram Taluk, Kancheepuram District.

(1) comprised in Survey No.76/2 of an extent of acre 0.09 cents.

(2) comprised in Survey No.79/6 of an extent of acre 0.07 cents.

(3) comprised in Survey No.148/12 of an extent of acre 0.04 cents.

(4) comprised in Survey No.118/3 of an extent of acre 0.10 cents.

(5) comprised in Survey No.168/7 of an extent of acre 0.07 cents.

(6) comprised in Survey No.63/5 of an extent of acre 0.07 cents.

(7) comprised in Survey No.89/2 of an extent of acre 0.08 cents.

(8) comprised in Survey No.156/9 of an extent of acre 0.19 cents.

(9) comprised in Survey No.209/1 (part) of an extent of acre 0.03-1/4 cents.

(10) comprised in Survey No.209/1 (part) of an extent of acre 0.03-1/4 cents.

(11) comprised in Survey No.209/1 (part) of an extent of acre 0.03-1/4 cents.

(12) comprised in Survey No.30/5 of an extent of acre 0.03 cents.

(13) comprised in Survey No.209/1 (part) of an extent of acre 0.01 cents.

(14) comprised in Survey No.209/6 of an extent of 0.03 cents.

(15) comprised in Survey No.139/2 house plot of an extent of acre 0.02 cents land together with superstructure thereon in which 1/3 share.

(16) Lands comprised in Survey No.30/9 of an extent of acre 0.04 5/16 cents.

(17) Lands comprised in Survey No.30/1 of an extent of acre 0.09 cents.

(18) Lands comprised in Survey No.30/5 of an extent of acre 0.03 cents.

(19) Lands comprised in Survey No.30/5 of an extent of acre 0.30 5/8 cents.

(20) Lands comprised in Survey No.30/2 of an extent of acre 0.11 5/8 cents.

(21) Lands comprised in Survey No.10/1 of an extent of acre 0.66 5/8 cents.

(22) Lands comprised in Survey No.21 (part) of an extent of acre 0.16 5/8 cents.

(23) Lands comprised in Survey No.209/6 of an extent of acre 0.01 cents.

(24) Lands comprised in Survey No.209/1 of an extent of acre 0.04 cents.

(25) Lands comprised in Survey No.209/1 of an extent of acre 0.02 cents.

(26) Lands comprised in Survey No.209/6 of an extent of acre 0.0 1/2 cents.

All that piece and parcel of lands situated in Nallur Village, Thirukazhukundram Taluk, Kancheepuram District, bearing Patta No.247, and the lands comprised in the respective Survey Numbers and the corresponding extent:

(27) Lands comprised in Survey No.118/3A of an extent of hectare 0.4.0 Are.

(28) Lands comprised in Survey No.143/11B1 of an extent of hectare 0.0.5 Are.

(29) Lands comprised in Survey No.30/21 of an extent of hectare 0.04.0 Are.

(30) Lands comprised in Survey No.30/9A of an extent of hectare 0.01.0 Are.

(31) Lands comprised in Survey No.30/9C of an extent of hectare 0.02.0 Are.

(32) Lands comprised in Survey No.6/1C of an extent of hectare 0.07.5 Are.

SCHEDULE ITEM 3:

All that piece and parcel of agricultural land comprised in the following Survey Numbers and corresponding extent of property situated in Amaipakkam, Nallur Village, Thirukazhukundram Taluk, Kancheepuram District.

(1) Lands comprised in Survey No.14/3A of an extent of hectare 0.11.5 Are.

(2) Lands comprised in Survey No.17/3B1 of an extent of hectare 0.59.0 Are.

(3) Lands comprised in Survey No.17/3B3 of an extent of hectare 0.07.5 Are.

Situated within the limits of the Office of the Sub Registrar Thirukazhukundram within the limits of the District Registrar Chengelpet.

VERIFICATION

We, the respective appellant and the respondents herein above do hereby solemnly affirm that the averments in paras 1 to 9 in the aforesaid compromise are true to the best of knowledge information and belief.
Verified at Chennai on this the 11th day of December 2019."

2. The abovesaid compromise memo shall form part and parcel of the judgment.

3. In view of the abovesaid compromise memo, no further adjudication needs to be entertained in respect of the grounds raised in the first appeal.

4. The parties have consented that they have fully agreed with the terms and conditions of the compromise memo and under these circumstances, the first appeal stands disposed of in terms of the above compromise memo. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Svn

To

The XV Additional Judge,
City Civil Court,
Chennai.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.M.Devendran , Advocate SR.No. 103719

+1cc to Mr.A.Palaniappan , Advocate SR.No. 103720

A.S.No.20 of 2017

A.SK(29/09/2020)