

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.01.2020

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.243 of 2009
and Tr.C.S.No.58 of 2010

C.S.No.243 of 2009

1.K.Adaikappan
 Proprietor
 M/s.Adaikappas' Shelters
 No.16-A/37, Saravana Street
 T.Nagar, Chennai - 600 017.

2.K.Adaikappan

.. Plaintiffs

Vs.

1.A.Alagappan

2.Palaniappan Perichiappan

.. Defendants

This Civil Suit is preferred, under Order IV Rule 1 O.S. Rules read with Order VII Rule 1 CPC seeking to pass a judgment and decree against the defendants

a) declaring that the cancellation of the Power of Attorney dated 23.04.2007 by cancellation deed dated 31.03.2008 by the first defendant is illegal, ultravires and not binding on the second plaintiff.

b) for a declaration that the cancellation of the Joint Development Agreement dated 23.04.2007 by the first defendant in respect of the suit property is illegal, ultra-vires and not binding on the plaintiffs.

c) for specific performance directing the first defendant herein to

specifically perform the Joint Development Agreement dated 23.04.2007 and convey 50% undivided share of schedule 'A' mentioned property, morefully described in schedule 'B' herein in favour of the plaintiffs or their nominees.

d) grant a decree for permanent injunction restraining the defendants herein, their men, agents or any one claiming from in any manner interfering with the possession of the suit property and the buildings put up thereon by the plaintiffs till performance of the Joint Development Agreement.

e) decree for permanent injunction restraining the first defendant herein, his men, servants, agents or any one claiming under him from in any manner alienating the land or the building put up in the suit property in favour of any person without performing the Joint Development Agreement or in the alternate direct the 1st defendant herein to pay the plaintiff the sum of Rs.1,86,72,880/-

f) direct the defendants to pay cost of the suit to the plaintiffs and

g) pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of this case and thus render justice.

For Plaintiffs : Mr.AR.L.Sundaresan, Senior Counsel
for Ms.A.L.Gandhimathi

For Defendants : Mr.G.RM.Palaniappan for D1
Mr.K.Hari Shankar for D2

Tr.C.S.No.58 of 2010

Mr.A.Alagappan .. Plaintiff

Vs.

Mr.K.Adaikappan
Proprietor of M/s.Adaikappas' Shelters
No.37, (Old No.16-A), Saravana Street
T.Nagar, Chennai - 600 017.

.. Defendant

This Civil Suit is preferred, under Order IV Rule 1 O.S. Rules read with Order VII Rule 1 CPC seeking to pass a judgment and decree against the defendant

a) for a declaration declaring that the Joint Venture Agreement dated 23.04.2007 entered between the plaintiff and the defendant as illegal, void ab-initio, non-est in law and the same is not binding upon the plaintiff

b) for a mandatory injunction directing the defendant, his men, agents, servants, legal representatives and assigns to hand over the original title documents relating to the property situate at Old Plot No.71, Old Door No.5, New Door No.9, Nyniappa Mudali Street, Chennai 600 028 of Lay Out No.10 of 1956 comprised in O.S.No.371, R.SNO.4087, C.C.No.976, Mylapore Village admeasuring 3066 sq.ft as follows:

1.Original Sale Deed dt 2.3.1957 registered as Document No.239/1957 on the file of the SRO, Mylapore.

2.Original Sale Deed dt 6.5.1961 registered as Document No.766 of 1961 on the file of SRO, Mylapore.

3.Original Release Deed dt 9.5.1977 registered as Document No.156 of 1978 on the file of the SRO, Mylapore.

4.Original Settlement Deed dt 4.10.2006 registered as Document No.2985 of 2006 on the file of SRO, Mylapore.

5.Original General Power of Attorney dated 23.04.2007 registered as Document No.939 of 2007 on the file of SRO, Mylapore.

6.Original Patta

7.Original Legal Heir ship Certificate of late Adaikappan

8.Original plan approved by CMDA

9.Original receipt evidencing payment for demolition and approval letter from Corporation as well as CMDA.

c) For a permanent injunction restraining the defendant from in any way encumbering or alienating the property morefully described in the schedule hereunder.

d) for payment of costs of this suit

e) for passing such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

For Plaintiff : Mr.G.RM.Palaniappan

For Defendant : Mr.AR.L.Sundaresan, Senior Counsel
for Ms.A.L.Gandhimathi

COMMON JUDGMENT

These two suits are listed today under the caption 'FOR REPORTING SETTLEMENT'. For the sake of convenience and clarity, parties in these two suits are referred to by their respective ranks in C.S.No.243 of 2009.

2. Mr.AR.L.Sundaresan, learned Senior Counsel instructed by Ms.A.L.Gandhimathi, counsel on record for plaintiffs and Mr.G.RM.Palaniappan, counsel on record for first defendant and Mr.K.Hari Shankar, counsel on record for second defendant are before this Court.

3. Plaintiff Mr.K.Adaikappan (to be noted, there are two plaintiffs, but effectively it is one individual Mr.K.Adaikappan) and first defendant Mr.A.Alagappan are present in Court. With regard to second defendant, learned counsel submits that there is personal inconvenience for second defendant today for being present in Court and seeks to dispense with the presence of second defendant for recording Common Memo of Compromise that has been arrived at between the parties. Common Memo of Compromise has been signed in the presence of one another is common say of all counsel and therefore, this request is acceded to.

4. Be that as it may, learned Senior Counsel and the two counsel before this Court make a common submission in unison that the parties have put their heads together, arrived at a settlement and have reduced the terms of settlement to a Common Memo of Compromise dated 08.01.2020, which reads as follows:

***'COMMON MEMO OF COMPROMISE FILED UNDER ORDER
XXIII RULE 3 CPC'***

The parties above named beg to submit as follows:-

The parties submit that they have amicably settled the disputes which is the subject matter of the suit in the following terms:-

1. The plaintiffs will be entitled to a sum of Rs.1,65,00,000/- (Rupees One Crore and Sixty Five Lakhs only) towards the alternate relief prayed for in the present suit in C.S.No.243 of 2009.

2. The said sum of Rs.1,65,00,000/- (Rupees One Crore and Sixty Five Lakhs only) shall be paid by the 1st defendant to the plaintiffs on or before 08.05.2020 and on payment of the same, the 1st defendant shall be entitled to continue to develop the schedule mentioned property or demolish the existing building and put up new constructions thereon or enjoy the property in any manner as he deems fit. Until such payment is made, the 1st defendant shall not be entitled to enjoy the schedule mentioned property in any of the manners described herein or otherwise.

3. In case the 1st defendant fails to pay the aforesaid sum in full on or before the specified date i.e., 8.5.2020, the first defendant shall be liable to pay such amount, left out as balance out of Rs.1,65,00,000/- after adjustment of the amount already paid by him and he shall be liable to pay interest @ 12% p.a. only for such balance amount as he may be liable to pay as on and up to that date and only thereafter, the 1st defendant shall be entitled to continue to develop the schedule mentioned property or demolish the existing

building and put up new constructions thereon or enjoy the property in any manner as he deems fit. Until such payment is made, the 1st defendant shall not be entitled to enjoy the schedule mentioned property in any of the manners described herein or otherwise.

4. The 2nd defendant does not claim any right against the plaintiffs under the Sale Agreement dated 27.08.2007, construction agreement dated 27.08.2017 and the extension agreements dated 2.2.2018 and 2.2.2018 and the 2nd defendant also forgoes the sums of Rs.8,00,000/- (Rupees Eight Lakhs only) paid by the 2nd defendant to the plaintiffs.

5. The plaintiffs have deposited the original title deeds pertaining to the schedule mentioned property to Mr.A.R.L.Sundaresan, Senior Advocate, having office at No.247, New Law Chambers, High Court Buildings, Chennai 600 104. The said Senior Advocate shall hold the documents in trust for both parties until the first defendant complies with the terms and conditions of this Memo of Compromise. On the date of payment of the entire amount of Rs.1,65,00,000/-with interest thereon if due by the 1st defendant to the plaintiffs Mr.A.R.L.Sundaresan, Senior Advocate, shall handover the original title deeds pertaining to the schedule mentioned property to the first defendant.

6. Plaintiffs give up all other reliefs sought for in the plaint against the defendant in respect of the suit property.

7. The Plaintiffs on receipt of the sum of 1,65,00,000/- (Rupees One Crore and Sixty Five Lakhs only) as stated above on or before 08.05.2020 or with interest thereon subsequent to 08.05.2020, at the time of such receipt of the full amount payable, shall hand over to the 1st defendant the original title deeds in respect of the suit property.

8. The Plaintiffs and the Defendants hereby state that except for the terms agreed hereunder in respect of the suit transaction, there is no other claim whatsoever against each other.

9. The parties shall bear their respective costs.

In the light of the Compromise arrived at between the Parties in CS No.243 of 2009, no further orders are required in Transfer C.S.No.58 of 2010

and the same may be dismissed as settled out of Court.

For the reasons stated above, it is prayed that this Hon'ble Court may be pleased to record the terms of this compromise and pass a decree in the suit in CS No.243 of 2009 in terms of the Compromise and thus render justice.

Dated at Chennai on this the 8th Day of January 2020.

(sd/-)

Counsel for Plaintiffs

(sd/-)

Plaintiffs

(sd/-)

Counsel for Defendants

(sd/-)

Defendants

SCHEDULE

All that piece and parcel of land and building bearing Old No.71, Old Door No.5, New Door No.9, Nyniappa Mudali Street, Chennai – 600 028, of layout No.10 of 1956, comprised in O.S.No.371, R.S.No.4087, C.C.No.976, Mylapore Village, measuring 3066 sq.ft. together with building thereon bounded on the

North by	:	Plot No.70
East by	:	Plot No.85
South by	:	20 Feet Road
West by	:	40 Feet Road

within the Registration District of South Chennai and Sub-Registration District of Mylapore.

(sd/-)

Plaintiffs

(sd/-)

Defendants'

5. All the three learned counsel make a request, on instructions, that both the suits may please be decreed in terms of Common Memo of

Compromise.

6. Aforesaid parties present before this Court have produced photocopies of their photo identity cards. The aforesaid Common Memo of Compromise dated 08.01.2020 as well as photocopies of photo identity cards of parties shall form part of the common decree in both the suits.

C.S.No.243 of 2009 is decreed in terms of Common Memo of Compromise and Tr.C.S.No.58 of 2010 is dismissed as settled out of Court. There shall be no order as to costs.

Speaking/Non-Speaking order

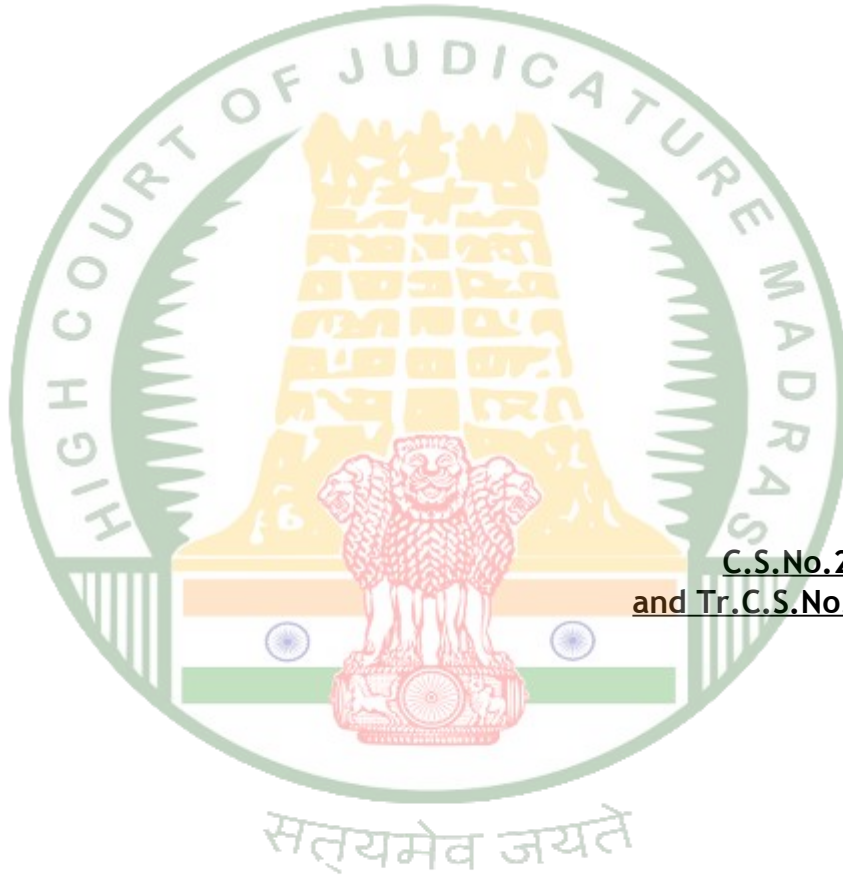
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M.SUNDAR, J.

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and Tr.C.S.No.58 of 2010

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