

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.02.2020

PRONOUNCED ON: 02.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

S.A. No.812 of 2013 &
M.P.Nos.1 and 2 of 2013, 1 and 2 of 2014, 1 and 2 of 2015
and
C.M.P.No.3417 of 2020
S.A.No.812 of 2013
P.Anandavalli Ammal ... Appellant/Appellant/Defendant

Vs.

Lakshmikantham ... Respondent/Respondent/Plaintiff

Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 29.04.2013 made in A.S.No.31 of 2012 on the file of the Principal District Judge, Villupuram District, Villupuram, confirming the judgment and decree dated 28.06.2012 in O.S.No.113 of 2007 on the file of the Principal Subordinate Judge, Tindivanam.

CMP No.3417 of 2020

R.Vijayasamundeeswari ...Petitioner/Third Party

Vs

1. P.Anandavalli ...1st Respondent/Appellant

2. Lakshmiantham ...2nd Respondent/Respondent

Petition filed under Order 1 Rule 10(2) of CPC praying to implead the Petitioner herein as Second Respondent in the appeal.

For Appellant : Mr.K.Doraisami, SC
for Mr.Kandan Doraisami

For Respondent : Mr.S.Sethuraman

JUDGMENT

This Second Appeal has been directed against the judgment and decree dated 29.04.2013 made in A.S.No.31 of 2012 on the file of the Principal District Judge, Villupuram District, Villupuram, confirming the judgment and decree dated 28.06.2012 in O.S.No.113 of 2007 on the file of the Principal Subordinate Judge, Tindivanam.

2. The appellant herein is the defendant and the respondent is the plaintiff. The parties are described as per their litigative status in the suit proceedings.

3. When this Appeal is taken up for hearing, Shri K.Doraisamy, learned Senior Counsel appearing for the appellant as well as Mr.S.Sethuraman, learned counsel appearing for the respondent would submit that the parties have reached a compromise and the terms of compromise have also been reduced to writing. According to the defendant, the suit schedule property was purchased by way of a registered sale deed dated 29.08.2000 from one Rajeswari, who acquired title to the suit property under two Wills, dated 22.02.1995 and 09.03.1995 which were executed by one Arumuga Mudaliar and his wife Visalakshi Ammal, who were the grand parents of the said Rajeswari. After the Will had come into operation, the suit property was sold to the defendant. After seven years from the date of purchase by the defendant, one A.Lakshmikantham, who is the daughter of Arumuga Mudaliar and Visalakshi Ammal filed a suit in O.S.No.113 of 2007 for declaration and consequential injunction before the Sub Court, Tindivanam. By judgment and decree dated 28.06.2012, the said suit in O.S.No.113 of 2007 was decreed in favour of the plaintiff. As against that, an appeal in A.S.No.31 of 2012 was preferred by the defendant before the learned Principal District Judge, Villupuram. By judgment and decree dated 29.04.2013, the said appeal came to be dismissed. As against the dismissal of the appeal, the present Second Appeal has been preferred by the defendant.

4. It appears that while ordering notice to the respondent, this Court, by order dated 03.12.2013, has granted interim stay.

5. Now pending disposal of the appeal, the parties have entered into a compromise and a joint memorandum of compromise, dated 14.02.2020 duly signed by both the appellant/defendant and respondent/plaintiff and their respective counsels, has been filed before this Court. The terms of compromise recorded in the joint memorandum, are extracted hereunder:

"JOINT MEMORANDUM OF COMPROMISE"

1.It is respectfully submitted that the Appellant herein is the Defendant and the Respondent herein in the Plaintiff in the suit O.S.No.113/2007.

2.It is respectfully submitted that originally the suit property belonged to Arumuga Mudaliar and his wife Visalakshi. The said Arumuga Mudaliar and his wife Visalakshi executed a WILL dated 22.02.1995 in favour of their grand daughter Rajeswari in respect of suit property.

By another Registered WILL dated 09.13.1995, the said Visalakshi, W/o Arumuga Mudaliar bequeathed her own property including 5HP Electricity Motor with EB Connection, which was not covered by the WILL dated 22.05.1995 to and in favour of her grand daughter Rajeswari, who is the vendor of the Appellant herein and the said Rajeswari was put in possession of the entire properties.

3.It is respectfully submitted that the said Arumuga Mudaliar and Visalakshi had one daughter only namely A Lakshmikantham, the Respondent herein. The Respondent is having three daughters and two sons. The aforesaid Rajeswari is the oldest daughter of Respondent. 4.It is respectfully submitted that the said Visalakshi died on 15.08.1999 and Arumuga Mudaliar died on 12.12.1999 and pursuant to the WILLS dated 22.02.1995 and 09.13.1995, the grand daughter of Arumuga Mudaliar and Visalakshi namely Rajeswari had continuously been in possession and enjoyment of the suit property.

5.It is respectfully submitted that, the Appellant purchased the entire property survey No.61/1 in 6.22 Acres of land from the said Rajeswari through a Registered Sale Deed dated 28.09.2000 and from the date of purchase the Appellant has continuously been in possession and enjoyment of the entire property by putting up a pucca residential house.

6. It is respectfully submitted that after seven years from the date of purchase of the suit property, the said Lakshmikantham filed OS No.113 of 2007, for a Declaration and consequential injunction before the Sub Court, Thindivanam.

7.By Judgment and Decree dated 28.06.2012 in OS No.113 of 2007, the learned Principal Sub-Judge decreed the suit. The Judgment and Decree dated 28.06.2012 in O.S.No.113 of 2007 was registered before the SRO, Mailam on 01.08.2012.

8.It is respectfully submitted that challenging the Judgment and Decree dated 28.06.2012 in OS No.113 of 2007, AS No.31 of 2012 was filed before the Principal District Court, Villupuram and the same was dismissed by Judgment and Decree 29.04.2013. As against the Judgment and Decree in AS No.31 of 2012 dated 29.04.2013 on the file of Principal District Court, Villupuram. The Appellant herein filed the above SA No.812 of 2013 before this Honourable Court and by order dated 03.12.2013 in MP No.1 of 2013 in SA NO.812 of 2013 this Honourable Court was pleased to order Notice of Motion and granted interim stay.

9.It is respectfully submitted that the

appellant and the Respondent in the above Second Appeal No.812 of 2013, on the advice of well wishers, have decided to settle all the disputes among themselves amicably. Pursuant to the compromise arrived at between the parties, both the parties in the above Second Appeal have agree to settle the issue subject matter of OS No.113 of 2007 on the file of Principal Subordinate Court, Tindivanam on the following terms and conditions.

a)The Respondent hereby affirms and agrees that the Appellant herein shall continue to enjoy the possession of the suit property and the Respondent has no claim or claims in the suit property in any manner and agree to withdraw the suit and recognize the title of the Appellant over the suit schedule property by relinquishing all her right and title over the property.

b)The Respondent herein agrees that she shall not in any way cause any hindrance or interference to the Appellant in respect of the suit property in future.

c)It is agreed by all the parties in the above I Second Appeal that the present relinquishment under this Joint Memorandum of Compromise will be binding on all the parties to the above Second Appeal and their heirs and successors in interest and no other Documents or Arrangements, if execute by any of the parties shall affect the rights of the Appellant herein in respect of the suit property.

d)It is made clear that no property other than the suit schedule property has been included in this Joint Memorandum of Compromise.

10.Under these circumstances, it is humbly prayed that this Honourable Court may be pleased to record this Joint memorandum of Compromise and pass a Decree in the above SA No.812 of 2013 as per the terms of this Joint Memorandum of Compromise dismissing the OS No.113 of 2007 on the file of Principal Subordinate Judge, Tindivanam as withdrawn and thus render Justice.

Dated at Chennai, this the 14th day of February 2020."

6. Both the learned Senior Counsel appearing for the appellant/defendant and the learned counsel appearing for the respondent/plaintiff would urge this Court to dispose of the Second Appeal in terms of the compromise as set out above.

7. At this stage, a Civil Miscellaneous Petition in C.M.P.No.3417 of 2020 dated 20.12.2019 has been moved by third party, namely, R.Vijayasamundeeswari, who is the daughter-in-law of of the plaintiff in the Original Suit, praying to implead her as second respondent in the Second Appeal.

8. The learned counsel appearing for the proposed third party would submit that the third party, being daughter-in-law of the plaintiff in the Original Suit had acquired some interest in the property through her husband and since her husband is no more and according to her, some settlement deed was effected in favour of the plaintiff's son and after his demise, she acquired interest in the property and therefore, she needs to be heard before any decision being taken in the Second Appeal.

9. This Court considered the submissions of the learned counsel appearing for the proposed third party in CMP 3417 of 2020 and the learned Senior counsel for the appellant/defendant and the learned counsel for the respondent/plaintiff in the Second Appeal and perused the entire materials placed on record.

10. Once the original parties, viz., plaintiff and the defendant have agreed to compromise their rights to the suit schedule property, the claim of 3rd party to be heard in this matter need not be entertained at all by this Court. This is more so, when the third party interest has accrued to her only pending litigation before the lower appellate Court as well as before this Court. Therefore, any supposed transaction is a pendente lite development and this Court is not bound to hear the third party. When the original parties have agreed to settle the lis between themselves, a party who acquired interest pendente lite, cannot prevent the parties from reaching settlement between them and in that view of the matter, this Court finds that the impleading petition need not be entertained. Moreover, when the appeal was pending before the lower appellate Court and also before this Court for a period, nearly seven years, no petition for impleadment was filed although the third party was in the know of things. Only when the parties proposed to compromise between themselves, the present impleading petition is moved by the third party in order to stall the compromise for serving her own ends. Therefore, this Court is of the view that the impleading petition in C.M.P.No.3417 of 2020 seeking for impleadment of the proposed third party deserve to be dismissed and the same is dismissed.

11. As far as the present Second Appeal is concerned, since both the parties, viz., the plaintiff and the defendant have entered into a compromise and filed a joint memo of compromise, the Second Appeal is allowed in terms of the

compromise as extracted supra. The joint memorandum of compromise, dated 14.02.2020 shall form part of the judgment. The parties shall bear their own costs. Consequently, all connected MPs are closed.

*Copy of the Memo of Compromise enclosed

Sd/-
Assistant Registrar (CS-III MDU)

//True copy//

Sub Assistant Registrar

Suk

To

1. The Principal District Judge,
Villupuram District,
Villupuram.
2. The Principal Subordinate Judge, Tindivanam.

Copy To

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

+1cc to Mr.S.Sethuraman, Advocate SR.No.18419

+1cc to Mr.Muthumani, Advocate SR.No.18590

S.A.No.812 of 2013

SAI (CO)
GMY (16/09/2020)

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