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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MS.JUSTICE R.N.MANJULA

O.S.A.No.176 of 2019
& CMP Nos.15450 & 15451 of 2019 & 1073 of 2020

1.T.P.Shamsudheen
2.P.K.Muhammed
3.P.K.Abbas

.. Appellants/Plaintiffs

Vs.

M.O.Rajan

.. Respondent/Defendant

Prayer: Original Side Appeals filed under Order XXXVI of Rule 1 of Original Side Rules read with Clause 15 of the Letters Patent against the judgment and decree dated 23.11.2018 in C.S.No.914 of 2006.

Prayer in C.S.No.914 of 2006:

(i) Granting a decree for specific performance directing the defendant to execute and register a sale deed, absolutely conveying the schedule mentioned property in favour of the plaintiffs as per the terms of the agreement for sale dated 29/06/2006 entered into between the plaintiffs and the defendant and consequently direct the defendant to hand over vacant possession of the schedule mentioned property within a time to be fixed by this Hon'ble Court failing which appoint an officer of court to perform the same.

OR

In the alternative directing the defendant to pay the plaintiffs a sum of Rs.10,48,125/- together with interest at the rate of 21% per annum on Rs.5,00,000/- from the date of the plaint till date of realization.

(ii) For a permanent injunction restraining the defendant, his men, agents and servants and everyone claiming under him and acting on his behalf from in any way alienating or encumbering the schedule mentioned property in any manner whatsoever;

For Appellants : Mr.B.Mohan
For Respondent : Mr.B.Ravi Raja



JUDGMENT

(Delivered by M.M.SUNDRESH, J.)

This appeal is filed against the judgment and decree dated 23.11.2018 in C.S.No.914 of 2006.

2. Today, a memorandum of compromise dated 09.07.2021 duly signed by the parties and attested by their respective counsel has been filed. The parties are also present through video conference. The terms of the memorandum of compromise dated 09.07.2021 read as under:

1.The appellants have agreed to receive a total sum of Rs.30,00,000/- (Rupees thirty lakhs only) in full and final settlement of all their claims against the respondent herein.

2.The Respondent has agreed to pay a total sum of Rs.30,00,000/- (Rupees forty five lakhs only) (sic) to the appellants herein Rs.10,00,00/- (Rupees Ten lakhs only) to each appellant.

3.The Appellants will be entitled to pray for and get refund of the full court fee paid by them in the above case as permissible under law and subject to the orders of this Hon'ble Court.

4.The Respondent in terms of the judgment and decree in C.S.No.914 of 2006 dated 23.11.2018 had made payments vide D.D. in favour of each of the Appellants (which DDs had not been encashed on time and have since been returned to the Respondent/Defendant). Moreover, even before the filing of the above OSA, by order of the Hon'ble Mrs. Justice Pushpa Sathyanarayana in A.No.3265/2019 in C.S.No.914/2006 dated 15.7.2019, another sum of Rs.7,67,513/- had been deposited by the Respondent/Defendant in Indian Bank, Madras High Court Branch, Chennai to the credit of the Suit A/c in C.S.No.914/2006 in favour of the 1st appellant/1st plaintiff vide F.D.No.0485071 dated 19.08.2019 and its Maturity value is Rs.8,45,248/- as on 5.7.2021. The Respondent/Defendant has no objection in the 1st Appellant withdrawing the same from the Bank as part of his share in the above said settlement amount.



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5.The Respondent has on this day paid the total sum of Rs.30,00,000/- (Rupees thirty lakhs only) as full and final settlement to the Appellants in the following manner.

a)To the 1st appellant T.P.Shamsudheen - Rs.8,45,248/- (Rupees eight lakhs and forty five thousand two forty eight only) vide the above said F.D.F.D.No.0485071 dated 19.8.2019 of Indian Bank, Madras High Court Branch, Chennai. F.D.R.No. and D.D.No.095642 dated 09.07.2021 for Rs.1,54,752/- (Rupees one lakh fifty four thousand seven fifty two only) drawn on HDFC Bank, Nungambakkam Branch, Chennai favouring the 1st appellant.

b) To the 2nd Appellant P.K.Muhammed - D.D.No.095631 (Amount Rs.8,33,333)/095641 (Amount Rs.1,66,667) dated 07.07.2021 and 09.07.2021 respectively for Rs.10,00,000/- (Rupees ten lakhs only) drawn on HDFC Bank, Nungambakkam Branch, Chennai favouring the 2nd appellant.

c)To the 3rd Appellant P.K.Abbas - D.D.No.095630 (Amount Rs.8,33,333)/095640 (Amount-Rs.1,66,667) dated 07.07.2021 and 09.07.2021 respectively for Rs.10,00,000/- (Rupees ten lakhs only) drawn on HDFC Bank, Nungambakkam Branch, Chennai, favouring the 3rd appellant.

6.It is further agreed that all the original documents of title of the suit Schedule property as listed herein below and belonging to the Respondent/Defendant, now in the custody of this Hon'ble Court vide Memo dated 11.11.2013 made in Application No.474/2012 in C.S.No.914/2006 shall be returned to the Respondent/Defendant in terms of the prayer of the respondent/defendant herein in C.M.P.No.1073/2020 in O.S.A.No.176/2019 to which the appellants have no objection.

a)Sale deed dated 31.10.1988 registered as Document No.675 of 1988.

b)Patta dated 12.04.1993 in C.A.No.1057 of 1992.

c)Certified copy of the order passed in O.P.No.670 of 1987.

d) Sale Deed dated 12.01.1962 registered as Document No.91 of 1962.

e)Rectification deed dated 23.08.1975 registered as Document No.1099 of 1975.

f)Sale deed dated 31.10.1957 registered as Document No.1167 of 1957.

7.The respondent due to old age and various



ailments is unable to sign his name and has therefore affixed his Left Hand Thumb impression and the appellants will not object for the same."

3. Learned counsel for the appellants submitted that the amount lying in Indian Bank, High Court Branch, Chennai to the credit of C.S.No.914 of 2006 on the file of this Court may be permitted to be withdrawn by the first appellant.

4. A perusal of the memorandum of compromise would show that the amount is lying in Indian Bank, High Court Branch, Chennai to the credit of C.S.No.914 of 2006 and the said amount is permitted to be withdrawn by the first appellant in terms of Clause 4 of the Memorandum of Compromise.

5. It is submitted by the learned counsel for the respondent that the document deposited may be permitted to be received by the respondent's counsel after endorsement in terms of clause 6 of the Memorandum of Compromise.

6. The learned counsel for the appellants submitted that in view of the Memorandum of Compromise, the Court fee paid may be returned as held in the decision of Apex Court in The High Court of Judicature at Madras, Represented by its Registrar General Vs. M.C.Subramaniam and others (2021 (3) Supreme Court Cases 560).

7. In the light of the above, the Judgment and decree of the learned single Judge in C.S.No.914 of 2006 dated 23.11.2018 stands modified in terms of the Memorandum of Compromise dated 09.07.2021. The learned counsel for the respondent is permitted to receive the original title deeds after making necessary endorsement. The Court fee paid by the appellants is permitted to be withdrawn.

8. The Original Side Appeal stands disposed of in terms of the memorandum of compromise dated 09.07.2021 and the memorandum of compromise dated 09.07.2021 shall form part of the decree. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

raa



To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+2ccs to Mr.B.Mohan, Advocate, S.R.No.32390

O.S.A.No.176 of 2019

CP(CO)
HS(08/09/2021)