

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (NPD) No.1600 of 2021

1.K.Vatchala
2.Hema Malani

...

Petitioners /
Defendants

versus

V.R.Ramesh

...

Respondent /
Plaintiff

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 15.03.2021 in I.A.No.1 of 2019 in I.A.No.7547 of 2017 in O.S.No.11659 of 2010 on the file of the learned XI Assistant Judge, City Civil Court, Chennai, by allowing the Revision, consequently, allow the I.A.No.1 of 2019 in I.A.No.7547 of 2017 in O.S.No.11659 of 2010.

For Petitioners : Mr.V.Sundarraman

For Respondent : Mr.K.Boopalan

ORDER

This Civil Revision Petition is filed against the order passed in I.A.No.1 of 2019 in I.A.No.7547 of 2017 in O.S.No.11659 of 2010 on the file of the learned XI Assistant Judge, City Civil Court, Chennai.

2. O.S.No.11659 of 2010 was filed for partition and preliminary decree was passed on 04.11.2011. The petitioners herein filed Final Decree Petition in I.A.No.7547 of 2017 and in Final Decree Petition an order was passed on 22.10.2018 by allotting, (i) ground floor, in favour of the first petitioner by recognising that, the first petitioner, is in possession of the ground floor; (ii) first floor, in favour of the second petitioner herein, by recognising that, the second petitioner, is in possession of the first floor, (iii) second floor, which is in possession of the respondent, in favour of the first petitioner and common right have been allotted to the petitioners and the respondent.

3. According to the learned counsel for the petitioners, this is an erroneous order for the reason that the second floor, which is in possession of the respondent was given to the first petitioner. Therefore, the

petitioners filed I.A.No.1 of 2019, for reviewing the order dated 22.10.2018. However, this Review Petition came to be dismissed. Against the said order of dismissal, this Civil Revision Petition is preferred.

4. When the matter came up for hearing on 13.09.2021, it was submitted by the learned counsel for the petitioners that, the matter is settled between the parties and therefore, wanted to post the matter today, for reporting settlement. Accordingly, the Joint Memo of Compromise is filed today. The parties have entered into compromise and decided to have a final decree in I.A.No.7547 of 2017 on the following terms;

"(a) The land in the suit schedule mentioned property can be divided in undivided shares and $1/3^{\text{rd}}$ undivided share may be allotted to each of the petitioners/defendants and respondent/plaintiff.

(b) With respect to the building on the ground floor and first floor the same may be allotted as per their present possession as identified in the Advocate Commissioner's report.

(c) The common passage as shown in the Advocate Commissioner's report and the staircase can be allotted in common to all the 3 parties.

(d) The petitioners / defendants submit that in future when the building is demolished and reconstructed by all 3 parties or their successors in interest the built-up area may be in proportion to their respective entitlement of undivided share of land.

(e) The final decree in the suit in O.S.No.11659 of 2010 may passed in the above terms."

5. In view of the Joint Memo of Compromise, the learned counsel for the petitioners and the learned counsel for the respondent prayed that, the order passed in I.A.No.1 of 2019 may be set aside and the matter may be remitted back to the learned XI Assistant Judge, City Civil Court, Chennai, for recording the Joint Memo of Compromise and passing final decree in accordance with the terms of Joint Memo of Compromise.

6. In view of this development and the submissions made by both the parties, this Court is of the considered view that the order passed by the learned XI Assistant Judge, City Civil Court, Chennai in I.A.No.1 of 2019 in I.A.No.7547 of 2017 in O.S.No.11659 of 2010 has to be set aside and is hereby set aside and the learned XI Assistant Judge, City Civil Court, Chennai, is directed to restore I.A.No.7547 of 2017 for recording the compromise in terms of Joint Memo of Compromise filed herein and pass final decree, in accordance with the terms of Joint Memo of Compromise and in accordance with law.

7. Accordingly, this Civil Revision Petition is disposed of. The Joint Memo of Compromise may be returned to the parties, after substituting with a copy for producing before the learned XI Assistant Judge, City Civil Court, Chennai. However, there is no order as to costs.

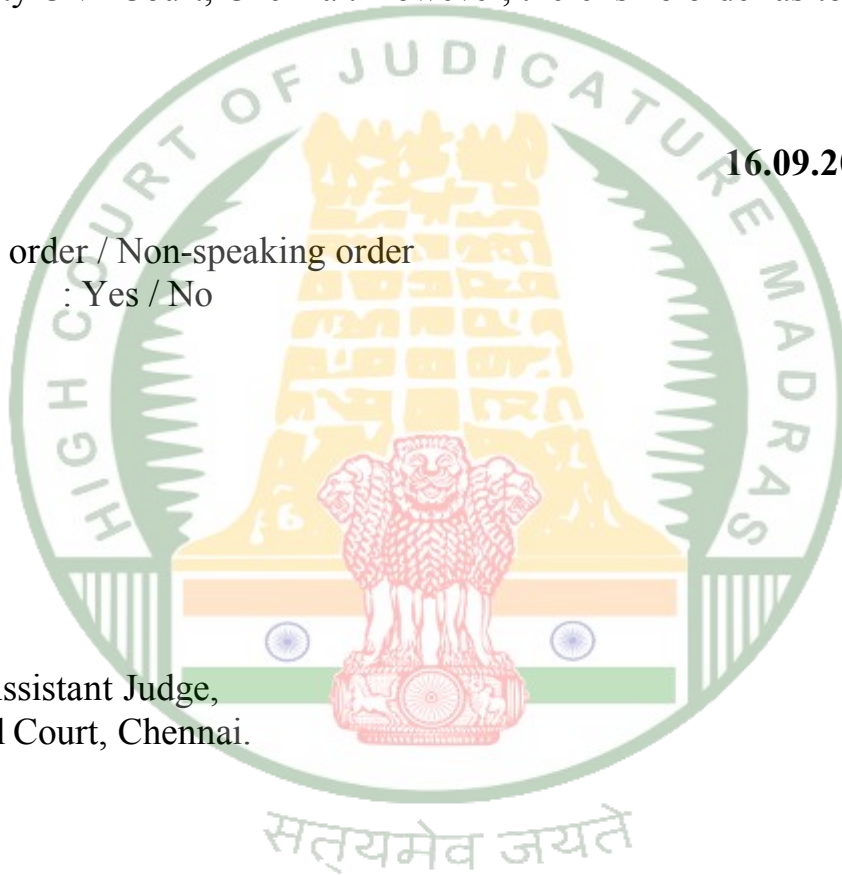
16.09.2021

Speaking order / Non-speaking order
Index : Yes / No

sri

To

The XI Assistant Judge,
City Civil Court, Chennai.



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G.CHANDRASEKHARAN, J.

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