



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.Nos.436,437 and 438 of 2017
and C.M.P.Nos.10722 of 2017 and 20184 of 2021

Padam Chand Jain
represented by his Power of Attorney
agent Ramachandran
son of Samydurai

... Appellant in all SAs/Appellant
in A.S.No.38 to 40 of 2013

...Plaintiff in O.S.No.328 and
2nd Defendant in O.S NO.329 of 2009

Vs.

1. G.Kanagaraj ... 1st Respondent in all SAs/
1st Respondent in A.S.No.38 to 40
of 2013/Defendant in O.S.No.328 and
Plaintiff in O.S.No.329 of 2009

2. P.S.Madhavan ... 2nd Respondent in S.A.No.437 and
438 of 2017/2nd Respondent in A.S.No.38 to
40 of 2013/1st Defendant in
O.S.No.329 of 2009

PRAYER in S.A.No.436 of 2017: The Second Appeal has been filed under Section 100 of the Civil Procedure Code to set aside the decree and judgment dated 23.02.2017 passed in A.S.No.38 of 2013 by the Principal District Judge of Kancheepuram District @ Chengalpattu, confirming the decree and judgment dated 28.03.2013 passed in O.S.No.328 of 2009 by the Subordinate Judge, Tambaram.

PRAYER in S.A.No.437 of 2017: The Second Appeal has been filed under Section 100 of the Civil Procedure Code to set aside the decree and judgment dated 23.02.2017 passed in A.S.No.39 of 2013 by the Principal District Judge of Kancheepuram District @ Chengalpattu, confirming the decree and judgment dated 28.03.2013 passed in O.S.No.329 of 2009 by the Subordinate Judge, Tambaram.



PRAYER in S.A.No.438 of 2017: The Second Appeal has been filed under Section 100 of the Civil Procedure Code to set aside the decree and judgment dated 23.02.2017 passed in A.S.No.40 of 2013 by the Principal District Judge of Kancheepuram District @ Chengalpattu, confirming the decree and judgment dated 28.03.2013 passed in O.S.No.329 of 2009 by the Subordinate Judge, Tambaram.

For Appellants : Mr.K.Bijai Sundar

For Respondents : Mr.Gunasekaran

C O M M O N J U D G M E N T

The appellant Padam Chand Jain represented by his Power of Attorney and the 1st respondent G.Kanagaraj have filed a suit for specific performance against the 2nd respondent P.S.Madhavan. The suit was decreed in favour of G.Kanagaraj against which the appellant Padam Chand Jain and the 2nd respondent P.S.Madhavan filed three appeals and all the three appeals were dismissed by a common judgment by the District Judge, Chengalpet dated 23.02.2017. Aggrieved over the same the said Padam Chand Jain filed three Second Appeals vide S.A.Nos.436,437 and 438 of 2017.

2. Now that the parties have arrived at a settlement by which the appellant Padam Chand Jain has given up the Second Appeal Nos.437 and 438 of 2017 as against P.S.Madhavan and P.S.Madhavan agreed to withdraw the Second Appeal in S.A.No.773 of 2017 filed by him. Thus the Second Appeal 773 of 2017 was dismissed as withdrawn by a separate order.

3. In so far as the Second Appeals Nos.436,437 and 438 of 2017 the appellant Padam Chand Jain and the 1st respondent G.Kanagaraj have arrived at a mutual settlement by which they agree to take undivided share of the land in the ratio 70:30. They filed a joint memorandum of compromise dated 03.12.2021 duly signed by the parties and attested by their respective counsel. The memorandum of compromise entered into between the parties reads as under:

" MEMO OF COMPROMISE ENTERED INTO BETWEEN THE PARTIES HEREIN

1. The parties to the above cases have amicably resolved their differences and dispute which are the subject matter of the above



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proceedings as hereinafter contained.

2. O.S.328 of 2009 was filed by Padam Chand Jain before the Subordinate Judge, Tambaram to declare that he is the absolute owner of the suit schedule property and to direct G.Kanagaraj to deliver vacant possession of said property to Padam Chand Jain on the basis of Registered the sale deed No.1634/2002 SRO-Pallavaram dated 17.05.2002 executed by P.S. Madhavan in favour of Padam Chand Jain.

3. O.S.329 of 2009 was filed by G.Kanagaraj before the Subordinate Judge, Tambaram against P.S.Madhavan and Padam Chand Jain for specific performance of a contract dated 12.02.1992 by directing the said P.S.Madhavan to execute the sale deed in favour of G.Kanagaraj.

4. Both the suits were disposed of by common judgment dated 28.03.2013 by the Subordinate Judge, Tamabaram in terms of which O.S.328 of 2009 was dismissed and O.S.329 of 2009 was decreed.

5. Challenging aforesaid the common judgment dated 28.03.2013 by the Subordinate Judge, Tamabaram of A.S.38 of 2013 and A.S.39 of 2013 were filed by Padam Chand Jain before the District Judge, Chengalpet and P.S.Madhavan also filed A.S.40 of 2013 challenging the judgment dated 28.03.2013 before the District Judge, Chengalpet.

6. The District Judge, Chengalpet by a common judgment dated 23.02.2017 dismissed all the said three appeals. Challenging the said judgment and decree dated 23.02.2017 in the three first appeals, the appellant herein has filed the above Second Appeals as mentioned. P.S.Madhavan has filed Second Appeal in S.A.No.773 of 2017 as against the judgment and Decree in A.S.No.40 of 2013. P.S. Madhavan has agreed to withdraw the Second Appeal in S.A.No.773 of 2017 on the date of recording this Compromise before the Court.

7. Due to the long pending litigation between the parties, they have decided to amicably resolve their disputes as mentioned hereunder.

a. The extent of the suit property as mentioned in O.S.328 of 2009 and O.S.329 of 2009 are one and the same namely 4152 sq.ft. The said



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extent 4152 sq.ft has been indicated in yellow colour in the plan annexed to this compromise memo.

b. It is mutually agreed between all the parties herein, that as per the sale deed of Padamchand Jain and agreement of sale of G.Kanagaraj the Padam Chand Jain shall be entitled to 70% undivided share of land admeasuring about 2906 sq.ft and G.Kanagaraj shall be entitled to 30% undivided share of land admeasuring 1246 sq.ft in the yellow colour portion marked as Plot No.4 admeasuring in totally 4152 sq.ft as indicated in the sketch. However such apportionment shall be subject to the actual extent of land available at site at the time of such sale.

c. It is further mutually agreed between Padam Chand Jain and G.Kanagaraj that their right title and interest in yellow coloured portion shall be sold to any prospective purchaser with mutual consent within a period of three months from the date of registration of the compromise decree and the sale proceeds thereof shall be apportioned between Padam Chand Jain and G.Kanagaraj at 70% and 30% respectively.

d. In the vent of Padam Chand Jain and G.Kanagaraj could not find any prospective purchaser as indicated in clause c supra, within the period of three months, from the date of registration of this compromise decree it shall be open to Padam Chand Jain to purchase 30% of share of G.Kanagaraj at the then prevailing market price. Padam Chand Jain shall exercise his option to purchase the share of G.Kanagaraj within three months from thereon, at the then prevailing market price. In case, Padam Chand Jain is unable to purchase the 30% of the share of G.Kanagaraj within the above specified three months. G.Kanagaraj shall purchase 70% of the share from Padam Chand Jain at the then prevailing market price within three months thereafter.

e. Padam Chand Jain and G.Kanagaraj shall develop the yellow coloured portion by executing all such work that are required and the cost thereof shall be apportioned between Padam Chand Jain and G.Kanagaraj in the ration of 70:30.



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f. G.Kanagaraj has filed E.P.No.28 of 2014 before the Subordinate Court, Tambaram now transferred to Subordinate Judge at Alandur and renumbered as E.P.No.776 of 2021 in O.S.No.329 of 2009 and the same is pending before the said Court. G.Kanagaraj agrees to withdraw the said E.P as not pressed in view of the compromise arrived herein.

8. The compromise decree in the above Second Appeals shall be duly registered in the Office of the Sub-Registrar, Pallavaram at the cost and expenses which shall be borne by the appellant/Padam Chand Jain and the registration shall be done within 30 days from the date of obtaining the certified copy of judgment in this appeals.

9. The above said memo or compromise has been entered into between the parties herein out of their own free will and volition and without any coercion or duress.

Hence, it is therefore prayed by the parties herein that this Honourable Court may be pleased to pass a decree in terms of the above said compromise."

The joint memorandum of compromise dated 03.12.2021 filed in C.M.P.No.20184 of 2021 in S.A.No.436 of 2017 is taken on file and shall form part of the records.

4.The Civil Miscellaneous Petition No.20184 of 2021 to record compromise is ordered and the Second Appeals are closed in terms of the memorandum of compromise dated 03.12.2021. The said Joint Memorandum of Compromise dated 03.12.2021 is taken on record and the same shall form part of the decree. There shall be no order as to costs. Consequently, Civil Miscellaneous Petition No.10722 of 2017 is closed.

SD/-

ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR



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To

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1. The Principal District Judge,
Kancheepuram District @ Chengalpattu.
2. The Subordinate Judge,
Tambaram.
3. The Section Officer,
VR Section,
High Court of Madras.

+4cc to Mr.K.Bijai Sunder, Advocate Sr.63994
+1cc to Mr.M.Sivavarthan, Advocate Sr.64145

S.A.Nos.436,437 and 438 of 2017
and C.M.P.Nos.10722 of 2017 and 20184 of 2021

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srg 24/02/2022