

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

CORAM

THE HON'BLE MR.JUSTICE **M.M.SUNDRESH**
and
THE HON'BLE MS.JUSTICE **R.N.MANJULA**

O.S.A.Nos.146 to 149 of 2017

O.S.A.No.146 of 2017

1.S.Govindaraj
S.Tyagarajan (since deceased)
2.T.Mahesh
3.Jayanand Govindaraj
4.Jayakumar Govindaraj
5.Siddharta
6.Adithya
S.Padmavathi (since deceased)
7.Jyoti Balasundaram
8.Lalitha Tyagarajan .. Appellants

Vs

K.R.Ramamani (since deceased)
1.Maj.General Chander Govindasamy
2.R.K.Shetty
3.Chitkala Govindaswamy
4.Vijayakumar Chandar
5.Sivashankar Chander .. Respondents

(cause title accepted vide order
dated 02.12.2016 in C.M.P.No.19048
of 2016 in O.S.A.SR.No.51621 of 2016)

O.S.A.No.147 of 2017

- 1.S.Govindaraj (deceased)
- 2.Jayakumar Govindaraj
- 3.Jayanand Govindaraj
- S.Padmavathi (since deceased)
- 4.Jyoti Balasundaram

.. Appellants

(Appellants 2 and 3 brought on record as LR's of the deceased first appellant vide order dated 27.07.2017 made in C.M.P.No.12083 of 2017 in O.S.A. No.147 of 2017)

Vs

- K.R.Ramamani (since deceased)
- 1.Maj.General Chander Govindasamy
 - 2.R.K.Shetty

.. Respondents

(cause title accepted vide order dated 02.12.2016 in C.M.P.No.19049 of 2016 in O.S.A.SR.No.51616 of 2016)

O.S.A.No.148 of 2017

- 1.S.Govindaraj (deceased)
 - 2.Jayakumar Govindaraj
 - 3.Jayanand Govindaraj
- (Appellants 2 and 3 brought on record as LR's of the deceased sole appellant vide order dated 27.07.2017 made in C.M.P.No.12084 of 2017 in O.S.A. No.148 of 2017)

.. Appellants

Vs

- K.R.Ramamani (since deceased)
- 1.Maj.General Chander Govindasamy
 - 2.R.K.Shetty

.. Respondents

(cause title accepted vide order
dated 07.12.2016 in C.M.P.No.19127
of 2016)

O.S.A.No.148 of 2017

S.Tyagarajan (since deceased)

1.T.Mahesh
2.S.Govindaraj
3.Jayanand Govindaraj
4.Jayakumar Govindaraj
5.Siddharta
6.Adithya
S.Padmavathi (since deceased)
7.Jyoti Balasundaram
8.Lalitha Tyagarajan .. Appellants

Vs

1.Chitkala Govindaswamy
2.Vijayakumar Chandar
3.Sivashankar Chander
4.Maj. General Chander Govindaswamy
K.R.Ramamani (deceased)
5.R.K.Shetty .. Respondents

(cause title accepted vide order
dated 08.12.2016 in C.M.P.No.19331
of 2016 in O.S.A.SR.No.51633 of 2016)

Appeals filed under Order 36 Rule 1 of O.S.Rules read with
clause 15 of Letters Patent against the order dated 29.09.2015 made
in C.S.No.1578 of 1992, T.O.S.No.11 of 1992, O.P.No.784 of 1992 and
C.S.No.708 of 1992.

For Appellants : Mr.R.Parthasarathy
in all cases

For Respondents : Mr.P.T.Nalinkumar for R1 & R2
in O.S.A.Nos.146, 147 and 148 of 2017
and for R4 and R5
in O.S.A.No.149 of 2017
Mr.Vijayaraghavan for R3 to R5
in O.S.A.No.146 of 2017
for R1 to R3 in O.S.A.No.149 of 2017

COMMON JUDGMENT

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

These appeals have been preferred against the order dated 29.09.2015 made in C.S.No.1578 of 1992, T.O.S.No.11 of 1992, O.P.No.784 of 1992 and C.S.No.708 of 1992.

2.Heard the learned counsel appearing for the parties.

3.Today, all the parties are present before this Court through video conference, except appellants 4 and 5, who are given up and the fifth respondent, whose presence is not required, being an executor and memorandum of compromise has been filed on behalf of the parties duly signed by the parties and attested by the respective counsel.

4. Learned counsel appearing for the appellants submits that Jyoti Balasundaram, who is the third appellant in O.S.A.No.147 of 2017 and seventh appellant in O.S.A.Nos.146 and 149 of 2017 is no more and memos have been filed to bring on record Divya Balasundaram, the legal heir of the said deceased respondent.

5.A memo has been filed by the respondents seeking an order to empower the executor(s) to collect 4000 additional shares (totally 12000 shares) for its distribution to the legatees as per the Will of S.T.Sadasivan dated 10.12.1990.

6.The above memos filed by the appellants and the respondents are taken on record.

7.The terms of the memorandum of compromise filed by the parties are extracted hereunder:-

15.The appellants admit and confirm the Common Judgment and Separate Decrees dated 29.09.2015, passed in CS No.708/1992, TOS No.11/1992, CS No.1578/1992 and OP No. 784/1992, as acceptable to them.

16. The appellants admit and confirm that the will dated 10.12.1990 and the Codicil dated 16.12.1991 respectively of Late S.T.Sadasivan, are true and valid.

17.The appellants confirm the exclusive title and right of Respondent Nos.1 and 2 to Plot Nos. 7 and 8 with house bearing door No.8/13, Brahadambal Road, Nungambakkam, Chennai - 600 034, as per the Will of S.T.Sadasivan dated 10.12.1990.

18. The appellants confirm the exclusive right and title of the Mrs.ChitkalaGovindasamy (since deceased) to Plot No.6 and House bearing door No.6/14, Brahadambal Road, Nungambakkam, Chennai - 600 034, and that her legal heirs alone are entitled to the said property.

19.The appellants agree for return of all original documents pertaining to the above properties filed before this Hon'ble Court during trial to the respondents, upon fulfillment of the necessary procedures by them.

20.Respondents agree that possession of Plot Nos.7 & 8 with House bearing door No.8/13, Brahadambal Road, Nungambakkam, Chennai - 600 034, has been taken by them on 25.07.2016, pursuant to the decree of the trial Court in CS No.708/1992 and it continues to be with them.

21.S.Gopinathan has agreed to vacate and hand over the possession of the garage and portion of plot nos.7 & 8 occupied by him, to the Respondents 1 & 2, provided payment of amount due to him is made by the legal heirs of late S.Tyagarajan. Accordingly, the 1st and 6th appellants undertake to pay the amounts due to Mr.Gopinathan for surrendering possession of that portion of Plot Nos.7 & 8 and the Garage therein to Respondents 1 & 2 and arrange withdrawal of the suit (s) filed by the said person and shall endeavour to complete this exercise within

a period of 3 months from the date of recording this Memorandum of Compromise by this Hon'ble Court and at any rate, before sale of the suit property.

22. The 1st and 2nd Respondents agree to sell and share the sale proceeds of the said Plot Nos. 7 & 8 with House bearing Door No.8/13, Brahadambal Road, Nungambakkam, Chennai - 600 034, among the parties in the following ratio:-

T.Mahesh	1st Appellant	10%	
Jayanand Govindaraj	2nd Appellant	5%	
Jayakumar Govindaraj	3rd Appellant	5%	
Divya Balasundaram	7th appellant	10%	
	Total		30%
Vijaykumar Chander	1st Respondent	35%	
Sivasankar Chander	2nd Respondent	35%	
	Total		70%

23. However, considering the indivisibility of the suit property in plot Nos.7 & 8 bearing Door No.8/13 Brahadambal Road, the parties hereunder have decided to sell the same within a period of six months from this date and divide the sale proceeds in the aforesaid ratio of 30% and 70% among themselves.

24. The said division of the sale proceeds as aforesaid would constitute Diversion of Income in the hands of all recipients by Overriding Title, which this compromise in unmistakable terms records between the parties.

25. In order to give effect to the aforesaid settlement, all the expenses related to the sale shall be borne by Appellants' 1st,2nd,3rd and 7th along with R1 and R2 in the aforesaid ratio of 30% and 70%.

26. The sale shall be concluded in a fair and transparent manner, if possible through an e-auction or private negotiation, within a period of six months as aforesaid to the highest bidder.

27. Until the property in Plot No.7 & 8 with House Bearing No.8/13, Brahadambal Road, Nungambakkam, Chennai - 600 034 is sold, R1 and R2 shall bear and pay all outgoings in respect of the said property like property tax, electricity charges, etc.

28. Income arising from the sale will accrue to the respective parties in the aforesaid ratio and consequently, any tax liability arising out of the Diversion of Income Overriding Title from the proceeds of the sale received by each of the Appellants 1st,2nd,3rd and 7th along with R1 and R2 will be borne by the respective parties on their own account, in accordance with the applicable laws and tax slabs.

29. The appellants agree that payment as above from the sale proceeds of Plot Nos. 7 & 8, with House bearing Door No.8/13, Brahadambal Road, Nungambakkam, Chennai - 600 043, will be in full quit of all their claims/demands in OSA Nos. 146 to 149 of 2017.

30. This settlement shall bind the respective parties' heirs, executors, legal representatives, successors and assigns.

31. Appellant No.4 (Siddhartha) and Appellant No.5 (Aditya) may be deleted as parties from the present appeals, since they are not necessary parties.

3.As agreed upon by the learned counsel for the parties, these appeals stand disposed of in terms of the memorandum of compromise dated 07.06.2021 and the memorandum of compromise dated 07.06.2021 shall form part of the decree. No costs.

(M.M.S., J.) (R.N.M., J.)
09.07.2021

Index:Yes/No
mmi/ssm

To

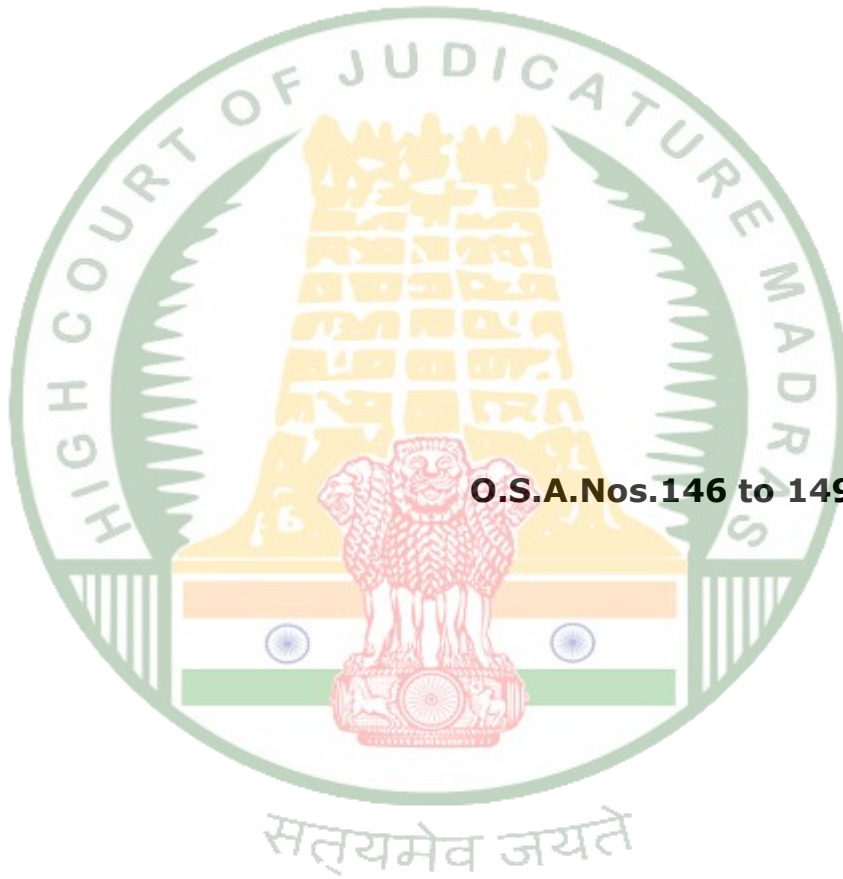
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High Court, Madras.



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**M.M.SUNDRESH, J.
and
R.N.MANJULA,J.**

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O.S.A.Nos.146 to 149 of 2017

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