



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :17.08.2021

CORAM:

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THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

A.S. (MD) No.191 of 2010
and
CMP (MD) No.7978 of 2016

1. P.Chandrasekar
2. P.Thangakennedy
3. P.Abraham Lingan

... Appellants /
Defendants No.2 to 4

-vs-

1. M.Velayutham
2. P.Manonmani
3. S.C.Manickam alias
S.C.Manickavel

... 1st Respondent/Plaintiff

... Respondents / 2& 3
Defendants/1&5

PRAYER : Appeal Suit is filed under Section 96 of Civil Procedure Code, praying to Regular Appeal against the Judgment and Decree passed in O.S.No.12 of 2007, on the file of Additional District Judge (Fast Track Court-I), Thoothukudi, dated 11.08.2010.

For Appellants : Mr.T.Selvakumaran

For Respondent-1 : Mr.R.Vijayakumar

For Respondents : No Appearance
(R2 & R3)

O R D E R

(Order of the Court was made by V. BHARATHIDASAN, J.)

The Appeal Suit has been filed against the Judgment and Decree passed in O.S.No.12 of 2007, on the file of the learned Additional District Judge, (Fast Track Court-I), thoothukudi, dated 11.08.2010.

2. The first respondent/plaintiff herein viz., Velayutham, filed a Suit for specific performance, directing the appellants as well as respondents 2 and 3 herein to execute a sale deed, pursuant



to the sale agreement, dated 23.01.2003.

3. The case of the plaintiff is that the 2nd respondent viz., Manonmani, was the original owner of the suit schedule property, has given a power of attorney in faovur of the third respondent, viz., S.C.Manickam @ S.C.Manickavel. By virtue of the power of attorney, the said Manickam @ Manickavel entered into a sale agreement with the plaintiff viz., Velayutham and also received part consideration, subsequently refused to execute the sale deed and hence, the suit has been filed. The Trial Court decreed the suit. Challenging the same, the present appeal has been filed.

4. It is also stated that pending appeal, the 2nd respondent viz., Manonmani, had executed a settlement deed in favour of the appellants herein, who are all her sons, settling the property in their favour.

5. Pending appeal, now the parties have settled the issue between themselves and now they have filed a Compromise Memo, 03.08.2021, duly signed by the appellants and the first respondent, which reads as follows:

"The 1st respondent in the above appeal filed O.S.No.12 of 2007 before Additional District Court [FTC No.1] Tuticorin, for the relief of specific performance and for delivery of vacant possession. The suit was decreed as prayed for. As against the same the present appellants who are defendants 2 to 4 in the suit have filed the above first appeal in A.S.No.191 of 2010. The defendants 1 and 5 / respondents 2 and 3, remained ex-parte before the trial court and they have not filed any appeal challenging the decree. Hence, they have not been added as parties to the compromise petition. During the pendency of the first appeal, due to the intervention of the elders, a compromise has been reached between the parties to the appeal. The terms of compromise are follows:

1. The appellants/ defendants 2 to 4 shall be entitled to 3 Acres of land in the 1st item of 1st schedule which is marked in Yellow Colour.

2. The 1st respondent/plaintiff will be entitled to Green marked portion



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measuring 10.11 Acres in the 1st item of 1st schedule.

3. The 1st respondent/ plaintiff will be entitled to the entire 2nd schedule property.

4. A coloured sketch for the 1st item of 1st schedule is enclosed indicating the portions of the appellants and the 1st respondent with regard to 1st item of 1st schedule. The sketch is also signed by the parties and enclosed along with the Compromise Memo.

5. A decree may be passed in terms of the joint compromise petition filed by the both parties.

It is therefore prayed that this Hon'ble Court may be pleased to accept this compromise petition and pass a compromise decree in terms of the compromise petition and thus render justice.

Dated at Madurai on this 18th day of March, 2021. "

6. Now, it is stated that, since the 2nd respondent viz., Manonmani, has executed the settlement deed in respect of all the suit schedule properties, in favour of the appellants, she lost her title and hence, she has not joined in the compromise memo and the third respondent is only the power attorney and he has also not joined in the compromise memo.

7. Pending the appeal, one Sankararaman, filed a petition to implead himself, as a party - respondent in the appeal, on the ground that pending the suit, the plaintiff, viz., Velayutham, has executed a sale agreement on 10.09.2008, in favour of one Ronald, in respect of the suit schedule properties and agreed to sell the suit properties after succeeding in the suit. On the basis of the above, sale agreement, the impleading petitioner viz., Sankararaman, entered into another sale agreement with Ronald, on 12.11.2020 and also paid a sum of Rs.4 lakhs to Ronald. In these circumstances, claiming right over the suit schedule properties, he wants to implead himself as a party- respondent and the said petition has



been strongly opposed by the appellants as well as the respondents.

8. Considering the fact that petitioner has entered into a sale agreement with some third party, he has to work out his remedy against his vendor, in the manner known to law and he cannot sought to be implead himself in the suit filed by Velayutham. The impleading petitioner is not a necessary party in the appeal and the petition is dismissed.

9. Earlier, on 11.08.2021, when the matter was listed for hearing, the appellants, Chandrasekar, Thangakennedy and Abraham Ligan and the 1st respondents/plaintiff, have present before this Court and stated that they have entered into a compromise and hence, the suit may be decreed, as per the terms of the Compromise Memo.

10. The learned counsel appearing for the respective parties have also identified the parties.

11. Since the matter has been settled between the parties amicably, the Appeal Suit is allowed, as per the terms of compromise entered into between the parties. The memo of compromise shall form part and parcel of the decree. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

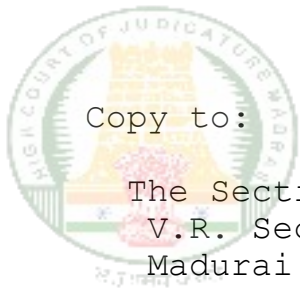
mpk/ebsi

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

Encl: Memo of Compromise dated 18.03.2021 in Original.

To

The Additional District Judge (Fast Track Court-I),
Thoothukudi.



Copy to:

The Section Officer,
V.R. Section,

Madurai Bench of Madras High Court, Madurai - 2 Copies

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+1 CC to M/s.R.VIJAYAKUMAR, Advocate (SR-26541[F] dated 17/08/2021)

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-26542[F] dated 17/08/2021)

+1 CC to M/s.P.BANU PRASATH, Advocate (SR-26807[F] dated 19/08/2021)

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