



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 27.09.2021

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

S.A (MD) No.693 of 2015

and

MP(MD) No.2 of 2015

1. G. Mallika

2. S.Gomathi (Died)

... Appellants/Respondents 1&2/
Plaintiffs

3. Kavitha

4. Ramkumar

(Appellants 3 and 4 are brought on record as LR's of the deceased 2nd appellant vide Court order dated 16.09.21 made in CMP(MD) Nos.7403 and 7405 of 2021 in SA(MD) No.693 of 2015 by ADJCJ. ...Appellants

vs.

1. K.V.Ravi

2.R.Balakarthikayeni (Died)

...Respondents/Appellants/
Defendants 1 &4

3. N. Balamani

4.D.Ganesh babu

...Respondents 3&4/Respondents 3&4
Defendants 2&3

5. Visalakshi

6.Shanmugasundaram

Respondents 5 and 6 are brought on record as LR's of the deceased 2nd respondent vide Court order dated 16.09.21 made in CMP(MD) Nos.7403 and 7405 of 2021 in SA(MD) No.693 of 2015 by ADJCJ)

...Respondents 5 & 6

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure to call for the records relating to the impugned judgement and decree passed by the learned Additional District Judge, Dindigul in A.S.No.42 of 2013 dated 07.07.2015 reversing the judgment and decree passed by the learned Subordinate Judge, Palani in O.S.No.70 of 2010 dated 15.12.2011 and set aside the same.

For Appellants

: Mr. N.Dilipkumar

For Respondents

: Mr. C.Gangai Amaran

JUDGMENT

The plaintiffs, who succeeded before the Trial Court, but, failed before the first appellate court, have filed the present Second Appeal.



2. The plaintiffs filed the suit for partition and separate possession of their respective 1/4 share in the 1st schedule property and for a declaration that the General Power of Attorney Deed Ex.A4 in respect of the plaintiff 2nd schedule is fraudulent, null and void and not binding on them and for a permanent injunction restraining the defendants from creating any further encumbrance or altering the physical features of the plaintiff 1st schedule property. Though, they could get a decree before the Trial Court, it came to be reversed by the first Appellate Court aggrieved against which, they have come up with the present Second Appeal.

3. When the matter was taken up for hearing, it was brought to the notice of the court that the parties have entered into a compromise and accordingly, they have filed a joint memo of compromise, the relevant portion of the which is extracted hereunder:-

" The parties above named respectfully submit as follows:-

1. Appellants herein are the Plaintiffs in the Original Suit filed by them praying for a partition and separate possession of their respective 1/4th share in the 1st schedule property; for a declaration that the General Power of Attorney deed - Exhibit A4 = Exhibit B.4 in respect of the plaintiff 2nd schedule is fraudulent, null and void and not binding on them; for a declaration that the sale deed- Exhibit A3 = Exhibit B.5 in respect of the plaintiff 2nd schedule is illegal, null and void and not binding on them; for a permanent injunction restraining the defendants from creating any further encumbrance or altering the physical feature of the plaintiff 1st schedule property.

2. The Learned Subordinate Judge, Palani by a Judgment and decree dated 15.12.2011 had decreed the suit as prayed for in O.S.No.70 of 2010.

3. Challenging the same the respondents 1 and 2/Mr.K.V.Ravi and Mrs.R.Balakarthikayeni (died) herein as appellants have filed A.S.No.42 of 2013.

4. The Learned Additional District Judge, Dindigul under the impugned Judgment and decree dated 07.07.2015 the first appeal had been partly allowed. He had modified the preliminary decree of partition and had reduced the share of the plaintiffs and had also negatived the plaintiffs' claim with regard to the relief sought against the General Power of Attorney deed and the sale deed. He had confirmed the

<https://hcservices.ecourt.gov.in/hcservices/> order of permanent injunction granted by the Trial



Court in respect of the plaint 1st schedule property.

5. Aggrieved over the Judgment and Decree passed by the Learned Additional District Judge, Dindigul in A.S.No.42 of 2013 dated 07.07.2015 reversing the Judgment and Decree passed by the Learned Subordinate Judge, Palani in O.S.No.70 of 2010 dated 15.12.2011, appellants Mrs.G.Mallika and Mrs.S.Gomathi (died) have filed the present second appeal in S.A.(MD).693 of 2015.

6. Pending second appeal, upon the intervention of elders and well-wishers of the family, out of their own volition, free will and the consent and after a series of mediatory compromise talks held between them, the respective parties have arrived at a compromise and they are willing to resolve their mutual dispute upon the terms settled henceforth. Accordingly the appellants and respondents have also filed joint memo of compromise before this Hon'ble Court on 15.04.2021.

7. In these circumstances the 2nd appellant/Mrs.G.Gomathi and the 2nd respondent / Mrs.R.Balakarthikayeni had died and the legal heirs of both the parties were also been impleaded vide Order of this Hon'ble Court dated 16.09.2021 and they have also willing to resolve their mutual dispute upon the terms settled henceforth. Hence, this Hon'ble Court may pass a compromise decree recording the terms of settlement which are as follows:-

a) In describing the suit schedule of property in the plaint, Survey number 85/2 admeasuring 3.33 acres is mentioned in both the 1st item of the suit schedule of property as well as in the 2nd item of the suit schedule of property. This joint compromise treats Survey number 85/2 as forming part of the 2nd item of the suit schedule property alone and it shall stand excluded from consideration under the 1st item of the suit schedule of property.

b) The 1st appellant is allotted a share of 55 cents of land in Survey No.85/2, Thoppampatti Village, Palani taluk, Dindigul district more fully described in the 2nd item of the suit schedule property.

c) The 2nd and 3rd appellants were allotted a share of 55 cents of land in Survey No.85/2, Thoppampatti Village, Palani taluk, Dindigul district more fully described in the 2nd item of the suit schedule property.

d) The remaining lands in Survey No.85/2, Thoppampatti Village, Palani taluk, Dindigul district shall jointly



belong to the respondents herein.

e) The 1st appellant is allotted 15% of the available lands in the 1st item of the suit schedule of property, leaving survey number 85/2. The 2nd and 3rd appellants were allotted 10% of the available lands in the 1st item of the suit schedule of property, leaving survey number 85/2. The 1st respondent shall be entitled to 40% of the available lands in the 1st item of the suit schedule of property, leaving survey number 85/2. The respondents 3, 4, 5 & 6 are jointly allotted 35% of the available lands in the 1st item of the suit schedule of property more fully described hereunder, leaving survey number 85/2.

f) The parties shall henceforth have no right or claim against each other in respect of the suit claim.

g) The parties hereby mutually undertake to sign, execute, attest all necessary documents towards the peaceful possession and enjoyment of their respectively allotted share of properties as mentioned above and also for the mutation of the respective revenue records.

h) The parties therefore prayed that this Hon'ble Court may kindly be pleased to record the above compromise and decree the suit in consonance with the deed of compromise and thus render justice".

4. The appellants and the respondents 1 to 4 and 6 were present before this Court and they were identified by their respective counsels and the Registrar Judicial of this Court. The fifth respondent had recently delivered a child and thereby she was unable to appear before this Court. The Registrar, Judicial had contacted the fifth respondent over phone and she was also informed about the joint memo of compromise and she has also accepted the same.

5. The second appeal is disposed of in terms of the joint memo of compromise. The joint memo of compromise shall form part of the decree. No costs. The connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



To

1.The Additional District Judge, Dindigul.

2.The Subordinate Judge, Palani.

Copy to

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-30540[F] dated
28/09/2021)

S.A (MD) No.693 of 2015
and
MP (MD) No.2 of 2015
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RK (21/10/2021) 5P 6C