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S.A.No.866 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Second Appeal No.866 of 2015
and MP No.1 of 2015

S.Nagalakshmi

... Appellant

Vs.

1. S.Sampath

2. Mrs. S.Jayalakshmi

3. Mrs. P.Vijayalakshmi

4. Mrs. D.Alamelu

5. Mrs. P.Nirmala

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 09.01.2015 dismissing AS No.216 of 2014 passed by the learned XVII Additional Judge, City Civil Court, Chennai in so far it relates to partition of the suit property by confirming the judgment and decree dated 25.02.2014 dismissing OS No.5744 of 2012 and passed by the learned XIII Assistant



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City Civil Court, Chennai.

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For Appellant : Mrs. Sarojini Govindan

For Respondents : Mr.S.Baskaran, for R1

No appearance for R5

Not ready in notice for RR2, 3 & 4

JUDGMENT

The plaintiff is the appellant in the Second Appeal.

2. The plaintiff filed the suit seeking for the relief of partition and for allotment of 1/6th share in the suit property.

3. Both the Courts below concurrently held against the plaintiff and consequently the suit was dismissed. Aggrieved by the same, the plaintiff filed this Second Appeal.

4. When the matter came up for hearing on 24.03.2022, this Court passed the following order.



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“This Court heard the learned counsel appearing on either side. There is a fight between the second wife and the son of the first wife for an extent of 526 sq.ft. Admittedly, the son of the first wife is in possession and enjoyment of the property. In the considered view of this Court, the matter can be a compromised between the parties, since the litigation between the parties has been going on for more than 25 years.

2. In view of the above, the appellant namely Nagalakshmi is directed to be present before this Court during the next date of hearing. The first defendant namely Mr.Sampath shall also be present at the time of hearing.

3. Post this case under the caption 'for recording compromise' on 31.03.2022 at 2.15 p.m.”

5. Thereafter the matter was once again posted on 31.03.2022 and this Court passed the following order:

“Pursuant to the earlier order passed by this Court on 24.03.2022, the parties were present before this Court.



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2. A draft memorandum of compromise was also produced before this Court. This Court is convinced with the terms of the compromise. The learned counsel appearing on either side shall finalize this memorandum of compromise and the learned counsel for the appellant shall direct the appellant to bring the Demand Draft for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) in favour of the respondent.

3. Post this case under the caption 'For Recording the Memo of Compromise' on 13.04.2022 at 10.30 a.m.”

6. When the matter was taken up for hearing to-day, the learned counsel appearing on either side submitted that the parties have entered into a compromise and they have also signed a Memorandum of Compromise. The appellant and the first respondent were also present in person at the time of hearing. This Court enquired the appellant and the first respondent and both of them stated that the matter has been compromised and they have signed the Memorandum of Compromise.



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7. The terms of the Memorandum of Compromise is extracted hereunder:

- 1. The Respondents 1 to 3 in the Appeal are the son and daughters of the late Subramaniam born through his first wife. The Appellant is the second wife of late Subramaniam and the respondents 4 & 5 are born to the appellant.*
- 2. The property bearing New No.118, Old No.24/2, III Main Road, CIT Nagar (East), Chennai 600 035 measuring about 1128 square feet was purchased by late Subramaniam during his life time. He constructed a superstructure and after his death. The appellants and respondents were living there.*
- 3. The Appellant and the respondents sold the vacant land measuring about 600 sq.ft. on the Southern side of the property to one Padmavathy by a Deed of absolute sale deed 28.5.1997, registered as Document No.858 of 1997 at the Office of the Sub-Registrar, T.Nagar for a total sale consideration of Rs.3,72,000/-.*



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4. *The Appellant filed O.S.No.5744 of 2012 on the file of XIII Asst. City Civil Court, Chennai for partition and separate possession of her 1/6th share in the property. The suit was dismissed on 25.02.2014. She filed AS No.216 of 2014, on the file of XVII Additional City Civil Court, Chennai. The appeal was also dismissed on 09.02.2015. The Second Appeal is filed against the judgment and decree. The respondents 2 to 5 remained exparte in the suit, First Appeal. In this appeal also there is no appearance for them.*
5. *During the pendency of the Second Appeal the female members of the family and the well wishers advised the appellant and the 1st respondent to settle the issue and asked the appellant to receive a sum of Rs.5,00,000/- (Rupees Five Lakhs only), and allow the 1st respondent, the only male member in the family to reside in the house without any hinderance from anybody.*
6. *Accordingly, the appellant and the 1st respondent have agreed to settle the dispute between themselves on the terms mutually agreed upon as setout in this memorandum of compromise.*



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A. The Appellant agreed to receive a sum of Rupees 5,00,000/- (Rupees Five Lakhs only) from the 1st respondent in full and final settlement of all her share right, interest and claim over the property and agreed to pass a final decree in favour of the 1st respondent, giving and allotting the entire property mentioned in the schedule to the 1st respondent.

B. The Appellant undertakes not to claim or demand any further amount from the 1st respondent. Hereafter, the 1st respondent is the sole and absolute owner of the property and the appellant undertakes not to interfere with his peaceful possession, enjoyment and occupation of the schedule property.

C. The 1st respondent paid the sum of Rs.5,00,000/- to the appellant who admits and acknowledges the receipt of Rs.5,00,000/- (Rupees Five Lakhs only) by way of Demand Draft dated 08.04.2022, bearing No.300506 drawn on Indian Bank Services Branch.

D. In the circumstances, the parties pray that a final decree be passed allotting the schedule property to the 1st respondent



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herein in terms of this compromise memo.

E. The respondents 2 to 5 who were set exparte in the suit and in the 1st Appeal also they did not appear even before this Court.

8. The appellant who was present in person confirmed that she has received the Demand Draft for a sum of Rs.5,00,000/- from the first respondent. The appellant who is the step mother of the first respondent alone contested the suit and the second and third defendants who are the sisters of the first defendant (first respondent) did not contest the case and did not claim for any share in the property. Therefore, by virtue of this Memorandum of compromise, the first respondent becomes the exclusive owner of the suit property and no one else will have any claim over the same.

9. In view of the above, this Second Appeal is disposed of in terms of the Memorandum of Compromise between the appellant and the first respondent and the Memorandum of Compromise shall form part of the decree. Considering the relationship between the parties and taking into



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consideration the facts and circumstances of the case, there shall be no order as to costs. It is left open to the first respondent to register the decree passed in the Second Appeal before the concerned Sub-Registrar Office so that this decree will be construed as the title document of the first respondent to deal with the property. Consequently, the connected miscellaneous petition is closed.

13.04.2022

Index : Yes/No
Internet : Yes/No
Speaking Order / Non Speaking Order
jv

To

1. The XVII Additional Judge,
City Civil Court, Chennai
2. The XIII Assistant Judge,
City Civil Court, Chennai.
3. The Section Officer
VR Section,
High Court Madras.



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N. ANAND VENKATESH, J.

jv

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