



C.S.No.267 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2022

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.S.No.267 of 2020
and O.A.Nos.486 & 487 of 2020
and A.Nos.3959 of 2021, 2173 & 2174 of 2022

1.John Raji Mammen
2.Philip Roy Mammen

... Plaintiffs

Vs.

1.Thomas Jerry Mammen (deceased)
2.Ann Reeja Eapen
3.John Britto Chandra Bose
4.Nancy Issac Mammen
5.Vivian Alexandra Mammen
6.Rhea Marie Mammen (minor)
Rep. by Mother and Natural guardian
Nancy Issac Mammen
7.Laila Ann Mammen (minor)
Rep. by Mother and Natural guardian
Nancy Issac Mammen



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8.Megan Olivia Mammen (minor)
Rep. by Mother and Natural guardian
Nancy Issac Mammen

... Defendants

[Defendants 4 to 8 are impleaded as the legal heirs of the deceased 1st defendant as per the order dated 10.02.2022]

Prayer: Complaint filed under Order VII Rule 1 of Code of Civil Procedure
Read with Order 24 Rule 1 of the Original Side Rules, praying for:

(a) For Partition and separate possession of the plaintiff's 1/4th share in the Schedule 'B' mentioned property;

(b) Directing the 1st defendant to pay past mesne profit @ Rs.20,000/- p.m from 1998 to 2019 for a total sum of Rs.49,20,000/- but restricted to three years only i.e for 36 months before the date of complaint for a sum of Rs.7,20,000/-;

(c) Directing the defendants to pay future mesne profit @ Rs.40,000/- per month, from the date of complaint, till the division and separate possession of the suit properties;

(d) appoint a commissioner to divide the suit schedule property by metes and bounds and allot the respective shares to the plaintiffs;

(e) grant permanent injunction restraining the defendants from collecting the future rents or to deal with the property in all means;

(f) award the costs of the suit.



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For Plaintiffs : Mr.P.Ranganatha Reddy
for M/s.King and Partridge
For D2, 4 to 8 : Mrs.Rupa J.Tharayil
For D3 : No Appearance

JUDGMENT

The suit has been filed by the plaintiffs, seeking for partition separate possession of the plaintiff's 1/4th share in the Schedule 'B' mentioned property and mesne profits thereof.

2.The matter is taken up for hearing, the learned counsel appearing on either side submitted that the dispute between the parties has been settled amicably and a Joint compromise Memo to that effect has been filed on behalf of both the parties. The said Memo has been duly signed by both the parties on different dates and attested by their respective counsel. Since they all are residing at different Countries, the Joint Memo of Compromise also notarised from the respective Notary Public. Of their Countries and the original Joint Memo of Compromise is also filed.



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3.The learned counsel appearing for both the parties submitted that, the subject matter is with regard to the division of schedule B property, i.e four flats situated in schedule A. All the four flats are divided equally by Plaintiffs 1 & 2 and 2nd defendant and LR's of D1, viz., D4 to D8 respectively. Therefore, they submitted that no prejudice would be caused if any of the parties are not present. Further, they submitted that since all the parties are residing outside India, their appearance may be dispensed with.

4.In support of their contention, the learned counsel appearing for the plaintiff referred to the judgment of Hon'ble Supreme Court reported in *1992 1 Supreme Court Cases 31* in the case *Byram Pestonji Gariwala vs. Union Bank of India and Others*. The relevant portion of the judgment is reproduced hereunder:

“38.Considering the traditionally recognised role of counsel in the common law system, and the evil sought to be remedied by Parliament by the C.P.C (Amendment) Act, 1976, namely, attainment of certainty and expeditious disposal of cases by reducing the terms of compromise decree to comprehend even matters falling outside the



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subject matter of the suit, but relating to the parties, the legislature cannot, in the absence of express words to such effort, be presumed to have disallowed the parties to enter into a compromise by counsel in their cause or by their duly authorised agents. Any such presumption would be inconsistent with the legislative object of attaining quick reduction of arrears in court by elimination of uncertainties and enlargement of the scope of compromise.

39.To insist upon the party himself personally signing the agreement or compromise would offer cause undue delay, loss and inconvenience, especially in the case of non-resident persons. It has always been universally understood that a party can always act by his duly authorised representative. If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorisation by vakalatnama, act on behalf of his client. Not to recognise such capacity is not only to cause much inconvenience and loss to the parties personally, but also to delay the progress of proceedings in court. If the legislature had intended to make such a fundamental change, even at the risk of delay, inconvenience and needless expenditure, it would have expressly so stated.”



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5.Upon hearing respective learned counsel appearing for the parties and on perusal of the Joint Memo of Compromise filed by the parties duly signed by the parties along with their learned counsel, it appears that the parties amicably settled the dispute by making allotment of each flat in favour of plaintiffs 1 & 2 and D2 and also the legal heirs of D1 viz., D4 to D8 respectively.

6.Since all the parties to the suit are residing outside the jurisdiction of this Court, they had duly signed in the Joint Memo of Compromise and the same has been notarised by the Notary Public of their respective Countries where the parties are living and also signed by their respective counsels and the learned counsel appearing for parties also duly identified the signatures of the respective clients. In such circumstance, the learned counsel appearing for the parties submitted that this Court may not insist upon the parties themselves personally signing the Joint Memo of Compromise as it would cause undue delay since the parties have been residing in abroad.



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7.The Hon'ble Supreme Court in the above referred case also observed that insisting upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience, especially in the case of non-resident persons. Hence, this Court taken on record the Joint Memo of Compromise of the parties concerned.

8.Recording the Joint Memo of Compromise, this suit is decreed in terms of Joint Memo of Compromise. The Joint Memo of Compromise shall form part and parcel of the decree. Consequently, connected Application stands closed.

9.Registry is directed to refund the Court fee to the plaintiff as per the Rules.

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KRISHNAN RAMASAMY,J.

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