

0IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

S.A.NOS.911 AND 1219 OF 2013

AND

M.P.NO.1 OF 2013

1.Athayee

2. Baby

3.Revathi

4.Sangeetha

...Appellants / Defendants 2 to 5
in both appeals

 V_S

Jayammal

...Respondent / Plaintiff
in both appeals

PRAYER in S.A.No.911 of 2013 : Second Appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree dated 07.12.2012 in A.S.No.15 of 2010 on the file of the Sub Court, Rasipuram preferred against the Judgment and Decree dated 28.01.2010 in O.S.No.166 of 2006 on the file of the District Munsif Court, Rasipuram.

PRAYER in S.A.No.1219 of 2013 : Second Appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree dated 07.12.2012 in Cross Appeal No.26 of 2012 on the file of the Sub Court, Rasipuram preferred against the Judgment and Decree dated 28.01.2010 in O.S.No.166 of 2006 on the file of the District Munsif Court, Rasipuram.

For Appellants

in both appeals

: Ms.Zeenath Begum

For Respondent

in both appeals

: Mr.T.L.Thirumalaisaamy

JUDGMENT

The defendants 2 to 5 are the appellants in both the second appeals.

2. The respondent/plaintiff filed a suit seeking for the relief of partition and for allotment of 1/8th share in the suit property. The Trial Court, through Judgment and decree dated 28.01.2010, dismissed the suit. Aggrieved by the same, the plaintiff filed an appeal in A.S.No.15 of 2010 before the Subordinate Court, Rasipuram and defendants 2 to 5 filed a Cross Appeal in Cross Appeal No.26 of 2012 before the same Court. The lower Appellate Court allowed the appeal filed by the plaintiff and dismissed the Cross Appeal filed by the defendants 2 to 5 through a common Judgment dated 07.12.2012. Aggrieved by the same, the defendants 2 to 5 have filed these second appeals.

3. During the pendency of these second appeals, the parties entered into a compromise and the same was reduced to writing and signed by the appellants and the respondent. The Memo of Compromise has also been signed by the counsel appearing on either side. Since the parties are all senior citizens, they are not in a position to come up to Chennai and hence they have given their identities along with the Memo of Compromise. The two sale deeds that have been executed pursuant to the compromise, also accompanies the memo of compromise.

4. The terms of the comprise are extracted hereunder :

1) The respondent Jayammal filed the suit O.S.No.166 of 2006 on the file of the District Munsif Court, Rasipuram, against these appellants claiming 1/8 share in the suit properties, wherein a preliminary decree as prayed for was granted, leading to the presentation of above second appeals.

2) Pending the second appeals, the share of the respondent had enlarged to 5/16 share in view of the judgment of The Hon'ble Supreme Court made in Vineeta Sharma Vs Rakesh Sharma reported in 2020-5-CTC p.302. In addition to this 5/16 share, the first defendant Alamelu, since deceased, had settled her 1/16 share in favour of the respondent herein, thereby the total share of the respondent was 6/16.

3) Now, the respondent has sold this 6/16 share in favour of appellants 2 to 4 and also to Shanmugham, son of the first appellant, by sale deeds dated 25.04.2022 registered as Document Nos.p/21/2022, 2528/2022-SRO, Rasipuram.

4) Therefore, as on date, the respondent does not possess any share in the suit properties, and, consequently, cannot prosecute the suit in O.S.No.166 of 2006 any further by way of final decree proceedings. Hence, the respondent hereby agrees to withdraw O.S.No.166 of 2006 on the file of the

District Munsif Court, Rasipuram. Hence, it is therefore prayed that this Hon'ble Court may be pleased to :-

(i) allow this second appeal in terms of this memo of compromise, and

(ii) record that the respondent is hereby withdrawing O.S.No.166 of 2006 on the file of the District Munsif Court, Rasipuram and thus render justice.

5. In view of the above, both the second appeals are disposed of in terms of the Memo of Compromise dated 26.04.2022 and the compromise memo shall form part of the decree. Considering the relationship between the parties and also taking into account the compromise arrived at between the parties, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

6. Both the Second Appeals are disposed of accordingly.

Sd/-
Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

Lpp

To

1.The Subordinate Judge,
Rasipuram.

2.The District Munsif,
Rasipuram.

+1cc to M/s.Zeenath Begum, Advocate Sr.No.28792

+1cc to Mr.T.L.Thirumalaisaamy, Advocate Sr.No.28836

S.A.Nos.911 and 1219 of 2013
and M.P.No. 1 of 2013

KV(CO)
RVM(13/07/2022)