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C.S. No.441 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.S.No.441 of 2005

and

A.Nos.7158, 7263 & 7264 of 2018

C.S.No.441 of 2005

1. G.Sugunambal
2. G.Shanmugam
3. G.Latha
4. G.Deivakadacham

.... Plaintiffs

Vs.

1. Dhanalakshmi Ammal
2. A.P.Om Prakash Narayanan
3. A.P.Logabiraman
4. G.Sathya Keerthi
5. M/s. Latha Constructions
Rep. by its Proprietrix,
Mrs.Dhanalatha.

6. P.Venugopal
- Defendants

...

(Defendants 5 & 6 are impleaded as per order, dated 17.11.2006 in A.No.1048/2006 and delay condoned to carry out amendment, as per order, dated 22.02.2007 in A.No.1929 of 2007)

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Prayer: Civil Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 CPC, 1908 CPC read with order II and IV Rule 1 of O.S. Rules, seeking for a Judgment and Decree against the defendants;

(a) to pass a preliminary decree for partition by declaring that the 4th plaintiff's share 2/3rd undivided share in respect of item No.1 of the property situate at No.51, 52-A, North Mada Street, Vadapalani, Chennai - 26, more fully described in the plaint schedule by effecting division of the property by metes and bounds and allocate two such share to the 4th plaintiff or in the event o property is not divisible by metes and bounds, direct the 4th defendant to effect of sale of his share of property in schedule Item No.1 to the plaintiffs for a value to be fixed by this Court, by appointing an Advocate Commissioner after passing of the preliminary decree:

(b) for a declaration that the 4th plaintiff has right, title, interest over the 2/3rd undivided share in respect of Item No.1 of the property situate at No.51, 52-A, North Mada Street, Vadapalani, Chennai - 26 and from interfering with the peaceful possession and enjoyment of the 4th plaintiff more fully described in the plaint schedule Item No.1;

(c) for a declaration that the alleged settlement deed, dated 21.04.1999 executed by the 1st defendant in favour of the 2nd and 3rd



defendants herein by a document registered as document No.3234 of 1999 in the office of the Sub-Registrar, Kodambakkam, as sham and nominal and the same is not binding upon the plaintiffs with respect to Item No.2, viz., at No.119 and 120 Old No.28B, Pillaiyar Koil Street, Arumbakkam, Chennai -106 more fully described in the plaint schedule and for the consequential relief of declaration that the plaintiffs are the absolute owners of the property situated at Door Nos. 119 and 120 Old No.28B, Pillaiyar Koil Street, Arumbakkam, Chennai -106 more fully described in the schedule I, Item No.2 to the plaint (amended as per order, dated 30.06.2017 made in A.No.3453 of 2017 in C.S. No.441 of 2005); and

(d) for permanent injunction restraining the defendants, their agents, servants or any person or persons claiming through them from alienating or dealing with the suit items No.1 and 2 except in accordance with law.

For Plaintiffs : Mr.R.Thiyagarajan

For Defendants : Mr.K.P.H.Thulasiraman for D1
Mr.S.Muthukumar for D2 and D3
Mr.R.Thirugnanam for D4
Mr.Ashokapathy
for M/s. Pathy and Pathy for D5 and D6

**A.Nos.7158, 7263 & 7264 of 2018**

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G. Sathya Keerthi

...Applicant/4th Defendant
(in All the Applications)

.Vs.

G. Deivakadacham

...Respondent/4th Plaintiff
(in All the Applications)**Prayer:**

in A.No.:7263 of 2018: To pass a final Decree that the Item No.1 of the Suit properties be divided into 2/3rd shares and the applicant/4th defendant be allotted with 2/3rd share and put in possession of such share.

in A.No.:7264 of 2018: In the event of incapability of such division, the 4th plaintiff/respondent herein be and is hereby directed to sell his 1/3rd share of the item No.1 of the suit properties to the applicant/4th defendant for a value to be fixed by this Hon'ble Court.

In A.No.7158 of 2018 : To appoint an Advocate Commissioner to inspect and divide the item No.1 of the suit properties by metes and bounds into 2/3rd share and allot such share to the applicant/4th defendant and file his report to that effect along with plan.

For Applicant/Plaintiff-4 : Ms. Vasudha Thiagarajan
For Respondent/Defendant-4 : Mr. R. Thirugnanam
(in All the Applications)



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J U D G M E N T

When the matter came up for hearing today, the learned counsel for both parties would jointly submit that the parties have settled the matter between themselves. Accordingly, a Joint Memorandum of Compromise has been filed before this Court having signature of both the parties concerned as well as their respective counsels. The parties have also affirmed the facts that they have entered into a Joint memo of compromise as per the details given below:

JOINT MEMO OF COMPROMISE FILED BY THE
4th PLAINTIFF AND 4th DEFENDANT

The Applicant/4th Defendant and the Respondent/4th Plaintiff state as follows:

This Hon'ble Court was pleased to pass a Judgment and Decree dated 23.04.2018 in C.S.No.441 of 2005 as follows:

"That G.Sathya Keerthi, the 4th Defendant herein shall be entitled to 2/3rd share in the first item of the suit property morefully setout in the schedule hereunder by effecting division of the suit property by metes and bounds.

2. That in the event of incapability of such division, the fourth plaintiff herein be and is hereby directed to sell his 1/3rd share of the first item of the property to as defendant for a value to be fixed by this Court

3. That the suit in C.S. No. 441 of 2005 do stand



dismissed.

4. That there shall be no costs of this suit."

2. It is submitted that the respondent/4th Plaintiff and the Plaintiffs 1 to 3 in the Suit have filed O.S.A.Nos 481 and 482 of 2018 challenging the said Judgment and Decree dated 23.04.2018 made in C.S.No. 441 of 2005 and the said O.S.A Nos. 481 and 482 of 2018 were dismissed as not pressed by a Judgment and Decree dated 18.02.2022.

3. It is submitted that the Judgment and Decree dated 23.04.2018 made in C.S.No.441 of 2005 have become final and conclusive between the Applicant and the Respondent.

4. Both the parties agree that the item No.1 of Suit Schedule property comprising the shares of both parties is incapable of division and hence the same shall be sold in the open market for the Sale Consideration mutually agreed by the Applicant and the Respondent and the same shall be divided by them in the allotted proportionate share of 2/3rd and 1/3rd between the Applicant and the Respondent respectively as per the Preliminary Decree made in C.S.No.441 of 2005 dated 23.04.2018.

5. Both the Parties agree that no bookings in the Kalyana Mandapam i.e., Item No.1 of the Suit Schedule property shall be done from to-day till the disposal of the same by sale as above.

6. It is further agreed that Applicant and the Respondent shall share the expenses towards the sale and liabilities standing over the said suit property in the ratio of their entitlement.



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7. The Applicant and the respondent have no mutual claims whatsoever against each other except to the extent indicated as stated supra.

8. The Parties agree to have final decree passed in the above terms.

9. That both the parties shall bear their respective costs.

3. In view of the same, the Joint memo of compromise is recorded and accordingly, final decree is passed in terms of the compromise. The memo of compromise shall form part of the decree. No Costs.

4. In the result, the Applications in A.No.7264 of 2018 and A.No.7263 of 2018 are allowed and the A.No.7158 of 2018 is closed.

25.04.2022

Lbm

Index : No
Internet : Yes
Speaking order



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C.S. No.441 of 2005

V.BHAVANI SUBBAROYAN, J.,

Lbm

C.S.No.441 of 2005

and

A.Nos.7158, 7263 & 7264 of 2018

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