

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.09.2022

CORAM

**THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH**

**AS (MD)No.595 of 2011 and
M.P.Nos.1 and 2 of 2014**

A.B.Kumaran

.. Appellant/
Plaintiff

Vs.

1.Noel Mohan Ravin

2.Paul Ravin

.. Respondents/defendants

Prayer : Appeal Suit is filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 07.09.2011 in O.S.No.131 of 2009 on the file of the District Judge, Kanyakumari at Nagercoil.

For appellant : Ms.J.Anandavalli

For Respondents : Mr.M.P.Senthil for R2
No appearance for R1

JUDGMENT

J. NISHA BANU,J.
and
N. ANAND VENKATESH,J.

The appellant, who was the plaintiff in the suit, filed the suit seeking for the relief of specific performance. The alternative prayer was granted by the Court below by directing the defendants to pay a sum of Rs.16 lakhs with interest at the rate of 9% per annum from the date of handing over of the possession of the suit property to the defendants. Insofar as the relief for specific performance is concerned, the same was rejected. Aggrieved by the same, the plaintiff has filed the present appeal.

2.During the pendency of this appeal, the parties decided to bury the hatchet and have entered into a compromise. The joint compromise memo signed by the parties and their respective counsel has also been filed before this Court. The terms of compromise is extracted hereunder:

“1.The respondents have executed a sale deed dated 16.11.2021 (registered as Doc.No.3687/2021 on the file of Sub-Registrar Office, Thuckalay) in favour of the appellant in respect of the suit property viz., an

extent of 3 acres and 8 cents in Old Survey No. 6320/2006 correlates to RE-survey no.208 (part) of Velimalai Village, Kalkulam Taluk, Kanyakumari District, which is the subject matter of the suit in O.S.No.131 of 2009 on the file of the District Court, Nagercoil as well as the above appeal in A.S.no.595 of 2011.

2.In view of the execution of sale deed dated 16.11.2021 (registered as Doc.No.3687/2021 on the file of Sub-Registrar Office, Thuckalay) the clause -2 of decree dated 07.09.2011 passed in O.S.No.131 of 2009 on the file of learned Principal District Judge, Kanyakumari at Nagercoil has become redundant and in sequence there is no requirement for the respondents to pay a sum of Rs.16,00,000/- with future interest at 9% per annum from the date of handing over the possession. The appellant is in possession of the above said property.

3.In respect of the property which is the subject matter of the above appeal, a second appeal in S.A.No. 488 of 2009 is pending before this Hon'ble Court as against the respondents. The appellant is not a party to the same. The respondents hereby agree that they will diligently prosecute the said S.A.No.488 of 2009, till the said litigation reaches its finality. It is further agreed that the appellant if so advised to a subsequent purchaser

of the property, pursuant to the above compromise shall take steps to implead himself in the second appeal in S.A.No.488 of 2009 and the respondents will say no objection for the same. Even in the event of the appellant not being impleaded, the appellant hereby agree and undertake that they will defend the said appeal to their fullest ability.

4.Pursuant to the execution of the sale deed dated 16.11.2021, the appellant has released the charge/security created in respect of the properties, namely, 1.16 acres in R.S.No.H-1/12-3 Needndakarai 'A' Village, Agastheeswaram Taluk, and 10 cents in R.S.No.G-6/1-13, Neendakarai 'A' Village, Agastheeswaram Taluk, Kanyakumari District, which were given as security at the time of execution of the agreement for sale, which are the subject matter of the suit and the said release deed has been registered as Doc.No.4362/2021 on the file of Sub-Registrar Office, Thuckalay.

5.The registration of sale deed dated 16.11.2021 ((registered as Doc.No.3687/2021 on the file of Sub-Registrar Office, Thuckalay) has been completed on the basis of the certified copy of the parent documents which is marked as Ex.B42, 44, 45 and 46 in the suit against which S.A.No.488 of 2009 and which is pending.

6.Since, the original parent documents were not handed over to the appellant by the respondents which are marked as Ex.B42,44, 45, and 46 in the suit against which S.A.No.488 of 2009, both the parties herein have entered into an agreement dated 16.11.2021 wherein originals of the settlement deed dated 31.05.2013 executed by Paul Ravin (2nd respondent) in favour of Noel Mohan Ravin (2nd respondent) registered as Doc.No.1354/2013 on the file of the Sub Registrar Office, Thuckalay has been handed over to the appellant has been given as security and the said property is in possession of the 2nd respondent.

7.Both the parties hereby agree that in the event of the respondents succeeding in S.A.No.488 of 2009, the respondents will hand over the original title deeds in respect of the present suit properties, which are marked as Ex.B42, Ex.B44, Ex.B45 and Ex.B46 in the suit against which S.A.No.488 of 2009 has been filed, the appellant shall hand over originals of the settlement deed dated 31.05.2013 executed by Paul Ravin (2nd respondent) in favour of Noel Mohan Ravin (2nd respondent) registered as Doc.No.1354/2013 on the file of Sub Registrar Office, Thuckalay immediately on the same day.

8.Both the parties hereby agree that if the

respondents loose the case in S.A.No.488 of 2009 then the sale deed dated 16.11.2021 is to be cancelled by the respondents and the appellant will handover possession of the suit property. The respondents hereby agree that they will return a sum of Rs.16,00,000/- to the appellant at the time of handing over possession of the suit property to the respondents.

9.The parties have entered the above compromise on their own volition without any coercion whatsoever.

10.Both the parties hereby agree that a decree may be passed in terms of the above compromise memo.”

3. The appellant was present before this Court at the time of hearing. Insofar as the respondents are concerned, each respondent has filed a separate affidavit and they have confirmed the fact with regard to entering into a compromise with the appellant. They have sought for dispensing with their appearance at the time of hearing, since they are not in a position to be present before this Court in person. The affidavits filed by the respondents are admitted and acted upon.

4. In view of the above, this appeal is disposed of in terms of the joint memo of compromise and the memorandum of compromise shall form part of the decree. In view of the above compromise entered into between the parties, there shall be a direction to refund the Court fees paid by the appellant. No costs. consequently connected Miscellaneous Petitions are closed.

(J.N.B.,J.) (N.A.V.,J.)
22.09.2022

Internet : Yes

RR

To

1.The District Judge,
Kanyakumari at Nagercoil.

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

AS(MD)No.595 of 2011

**J. NISHA BANU,J.
and
N. ANAND VENKATESH,J.**

RR

AS (MD)No.595 of 2011

22.09.2022