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AS. Nos.84 and 285 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.03.2023

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

and

THE HONOURABLE MR.JUSTICE P.B.BALAJI

AS. Nos.84 and 285 of 2013
and MP.No.1 of 2013

AS. No.84 of 2013

Jose K. Varghese (died)

2. Jancy Jose

3. Iwin Jose

4. Ijoe Jose

.. Appellants

[A2 to A4 are brought on record as LRS of the deceased
Jose K.Varghese, vide order of this Court dated 13.10.2022
in CMP.No.7220 of 2016 in AS.No.84 of 2013]

Versus

1. B. Savithri

2. M.Balasubramaniam

3. Manimekalai

.. Respondents

PRAYER: First Appeal filed under Section 96 of C.P.C. against the judgment and decree dated 14.08.2012 made in OS.No.300 of 2008 on the file of the IV Additional District and Sessions Judge (Fast Track Court No.II), Coimbatore.

For appellants : Mr.R.Krishna Prasad

For respondents
for R3 : Mr.C.Seethapathy



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AS. No.285 of 2013

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Mainimekalai

.. Appellant

Versus

1. Jose K. Varghese (deceased)
2. B.Savithri
3. M.Balasubramaniam
4. Jancy Jose
5. Ijoe K. Jose
6. Iwin Jose

.. Respondents

[RR4to 6 are brought on record as LRS of the deceased
1st respondent, vide order of this Court dated 19.12.2017
made in CMP.Nos.11574 to 11576 in AS.No.285 of 2013]

PRAYER: First Appeal filed under Order XLI-A & Section 96 of C.P.C. against the judgment and decree dated 14.08.2012 passed in OS.No.300 of 2008 on the file of the IV Additional District and Sessions Judge (Fast Track Court No.II), Coimbatore.

For appellant	:	Mr.C.Seethapathy
For respondents	:	
for RR4 to 6	:	Mr.R.Krishna Prasad



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COMMON JUDGMENT

(Judgment of the Court was delivered by S.S.SUNDAR, J)

These appeals arise out of the common judgment and decree in O.S.No.300 of 2008 on the file of the IV Additional District Court (Fast Track Court No.II), Coimbatore.

2. The appellant 2 to 4 in A.S.No.84 of 2013 are the legal heirs of first appellant late Sri.Jose K.Varghese, who filed the suit in OS.No.300 of 2008 for specific performance and compensation. While rejecting the claim for specific performance, the Trial Court has granted alternative relief for return of Rs.3,00,000/- with 12% interest from the date of plaint till date of decree and thereafter at 6% till payment and a charge was also created over the suit property. Aggrieved by the judgment and decree late Sri.Jose K. Varghese as well as the third respondent preferred the respective appeals.

3. After hearing the parties elaborately, this Court suggested possible settlement between parties. Thereafter, the parties in the appeals have arrived



at a settlement and filed a Memorandum of Compromise, dated 17.03.2023 before this Court signed by the parties and their respective counsels. The parties are also present before this Court and agreed that they have entered into the Memorandum of Compromise out of their free will without any compulsion. The terms of compromise reads as follows:

“1. The 3rd respondent agrees and undertakes to pay the Appellants a total sum of Rs.12,00,000/- (Rupees Twelve Lakhs only) towards full and final settlement of all the disputes.

2. The above payment of Rs.12,00,000/- (Rupees Twelve Lakhs only) is being made in the following manner by way of post-dated cheques:

(a) Cheque dated 03.04.2023, bearing number 100175, for a sum of Rs.6,00,000/- (Rupees Six Lakhs Only) and

(b) Cheque dated 10.08.2023, bearing number 100280, for a sum of Rs.6,00,00/- (Rupees Six Lakhs Only), both drawn on CSB Bank, Singanellur (85) branch.”

3. The 3rd respondent assures that the above mentioned two cheques will be honoured. In default of payment, the Appellants reserve their right to approach this Hon'ble Court to terminate the compromise.

4. Upon the execution of this Memorandum of Compromise, the parties herein undertake to withdraw all cases, complaints, suits, pleadings, petitions, applications, appeals, representations, notices etc., which may have been filed/issued against each other, whether before this Hon'ble Court or before



any other judicial or quasi-judicial authority or any other authority.

5. Specifically, the parties herein agree that the aforementioned suit in O.S.No.300 of 2008, on the file of IV Additional District Court (Fast Track Court No.II), Coimbatore, is covered by this Memorandum of Compromise. The aforementioned judgment and decree passed by the IV Additional District Court (Fast Track Court No.II), Coimbatore in O.S.No.300 of 2008, shall stand substituted by this Memorandum of Compromise and the parties shall be bound by the same.

6. The parties herein confirm that all the claims against each other have been fully and finally settled by this Compromise and that they have no further or other claims of whatsoever nature against each other.

7. The third respondent shall be at liberty and is entitled to recover the the amount of Rs.12,00,000/- (Rupees Twelve Lakhs only) paid under this Memorandum of Compromise from B.Savithri viz., the first respondent, who was the first defendant in the aforementioned suit OS.No.300 of 2008, on the file of IV Additional District Court (Fast Track Court No.II), Coimbatore.

8. The parties herein/appellants in each of the above appeals pray for refund of respective court fees paid by them in their respective appeals.

9. The parties herein shall bear their respective costs.”



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4. The learned counsel for the appellants in A.S.No.84 of 2013 submitted that the other side has handed over two cheques the first cheque is dated 03.04.2023 for a sum of Rs.6,00,000/- and the second cheque is dated 10.08.2023 for a sum of Rs.6,00,000/-. Since the compromise memo is signed on the basis of the undertaking that the entire amount of Rs.12,00,000/- will be paid on the respective dates of the two cheques. It is further submitted that the matter may also be posted for compliance on any day after 10.08.2023.

5. The learned counsels on either side now state that this Court may pass a judgment and decree in the two appeals in terms of the Memorandum of Compromise.

6. Considering the representations and the submissions of the learned counsels appearing for both sides, these appeals are disposed of in terms of the Memorandum of Compromise dated 17.03.2023. The Memorandum of Compromise shall form part of the decree. As per the compromise memo, it is open to the appellants in A.S.No.285 of 2013 to proceed against the first defendant in the suit in OS.No.300 of 2008 for the money which they were forced to pay under the settlement. The appellants are entitled for refund of



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Court fee as per law. No costs. Consequently, connected miscellaneous petition is closed.

Registry is directed to post the appeals for compliance on 14.08.2023.

(S.S.S.R.J.) (P.B.B.J.)
17.03.2023

Speaking Order : Yes / No
Index : Yes / No
pvs

To
1. The IV Additional District and Sessions Judge (Fast Track Court No.II),
Coimbatore
2. The Section Officer,
V.R.Section, High Court, Madras



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S.S.SUNDAR, J.
and
P.B.BALAJI, J.

pvs

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