



WEB COPY



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2023

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

A.S.No. 1087 of 2009

1. Manimekalai (died)
2. N. Pradeep
[2nd appellant recorded as LR of the
deceased 1st appellant. Memo recorded
in SR.No.6260 of 2021 vide order of
Court dated 17.03.2021 made in
A.S.No. 1087 of 2009]

3. K. Mani @ Arthanari
4. T.P. Subramanian
Represented by his Power
of Attorney S. Raji,

[RR 3 &4 are impleaded as party
respondents vide order of Court
dated 13.04.2017 made in
CMP.Nos. 2453 & 2454 of 2017
in A.S.No. 1087 of 2009]

... Petitioners

Versus

1. Rajammal
2. Kuppayee Ammal

... Respondents

First Appeal filed under Section 96 read with Section XLI of the Code of Civil Procedure, 1908, to set aside the judgment and preliminary decree dated 24.08.2009 passed by the learned Additional District Judge, [Fast Track Court No.I], Salem, in O.S.No. 7 of 2008 granting preliminary decree for partition of the three items of the suit property.



For Petitioners : Mr.N.A. Ravindran
Senior Counsel

For R1 : Mr.G. Vasudevan
For R2 : Mr.Panchatsaram
For R3 & R4 : Mr.D. Shivakumaran

JUDGMENT

Pending the Appeal Suit, now the parties have amicably resolved the dispute among themselves and have entered into Joint Memorandum of Compromise, **dated 25.01.2023 & 13.02.2023** are produced before this Court which reads as follows:-

(I). "1. Mrs. Rajammal, the 1st Respondent herein filed in O.S.No. 7 of 2008 for Partition and Possession of the suit property by metes and bounds and the same was decreed by the learned Additional District Judge [Fast Track Court No.I], Salem, by the judgment and decree dated 24.08.2009.

2. Mr.Pradeep, the 2nd appellant herein along with the 1st Appellant (since deceased) Manimekalai filed the appeal vide A.S.No.1087 of 2009 against the decree and judgment made in O.S.No. 7 of 2008.

3. Pending decision in A.S.No.1087 of 2009 by this Hon'ble Court, the learned Additional District Judge, Salem, passed a final decree in the Partition Suit, despite grant of stay of further proceedings in M.P.No. 1 of 2009 in A.S.No. 1087 of 2009. The 2nd Respondent Mrs.Kuppayee Ammal filed an application on 30.04.2014 vide I.A.No. 84 of 2015 in O.S.No. 7 of 2008 before the 2nd Additional District Judge, Salem, seeking the allotment of her share in the suit properties in accordance with the final decree passed in I.A.No. 256 of 2010 in O.S.No.7 of 2008 on the file of 2nd Additional District Judge on 26.11.2012.



WEB COPY

The final decree was registered as Document No. 5540 of 2015 on the office of SRO, Omalur on 03.08.2015.

4. The 1st Appellant Mrs.Manimekalai died intestate on 19.12.2020 leaving behind the 2nd Appellant Mr.Pradeep as her only legal heir and the entire estate of the 1st Appellant devolved on the 2nd appellant by operation of law.

5. The 2nd Appellant and the 2nd respondent, to sink their differences and to buy peace of mind and bring about complete harmony and goodwill among the family members of the appellant and the 2nd respondent, have decided to compromise the long-drawn serial litigations that destroy unity and solidarity among their family members and have decided to enter into this Compromise and the said compromise may be recorded.

6. The Settlement arrived at during the discussion in the presence of mediators had engendered to relinquish their interest allegedly claimed by the 2nd Respondent in the suit property and the 2nd Respondent further agrees to accept in terms of money, in consideration of such relinquishment without insisting upon an appropriate partition and valuation thereof.

7. Mr.Pradeep, the second appellant sole surviving in the said appeal had accordingly paid a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) to the 2nd Respondent and the 2nd Respondent hereby admit and acknowledges the receipt of such consideration and agree that she has no claim, interest, title or right into and upon 1/3rd share in the suit property as a result of the decree passed in O.S.No. 7 of 2008 and that the 2nd Appellant is entitled to the 1/3rd share which is allotted to the 2nd Respondent herein.

8. Mr.Pradeep herein and 2nd Respondent has agreed that this Joint Memo of Compromise be filed before this Hon'ble Court with a prayer to pass a decree and judgment in terms of this Memorandum of Compromise and have accordingly filed the Joint Memorandum of Compromise.

9.The parties have agreed to bear their respective costs.

10. It is, therefore, prayed that this Hon'ble Court may be pleased to set aside the preliminary decree passed on 24.08.2009 and the final decree passed on 28.11.2011 in O.S.No. 7 of 2008 on the file of learned II Additional Judge, Salem, with reference to the 1/3rd share and pass a decree in terms of this Joint



Compromise Memo and allow this appeal and thus render justice.

(II). 1. Mrs. Rajammal, the 1st respondent herein filed O.S.No. 7 of 2008 for Partition and Possession of the suit property by metes and bounds and the same was decreed by the learned Additional District Judge [Fast Track Court No.I], Salem, by the judgment and decree dated 24.08.2009.

2. Mr.Pradeep, the 2nd Appellant herein along with the 1st Appellant (since deceased) Manimekalai filed the appeal vide A.S.No.1087 of 2009 against the decree and judgment made in O.S.No. 7 of 2008.

3. Pending decision in A.S.No.1087 of 2009 by this Hon'ble Court, the learned Additional District Judge, Salem, passed a final decree in the Partition Suit, despite grant of stay of further proceedings in M.P.No. 1 of 2009 in A.S.No.1087 of 2009. The 2nd Respondent Mrs.Kuppayee Ammal filed an application on 30.04.2014 vide I.A.No. 84 of 2015 in O.S.No.7 of 2008 before the 2nd Additional District Judge, Salem, seeking the allotment of her share in the suit properties in accordance with the final decree passed in I.A.No.256 of 2010 in O.S.No.7 of 2008 on the file of 2nd Additional District Judge on 26.11.2012. The final decree was registered as Document No.5540 of 2015 on the office of SRO, Omalur on 03.08.2015.

4. The 1st Appellant Mrs.Manimekalai died intestate on 19.12.2020 leaving behind the 2nd Appellant Mr.Pradeep as her only legal heir and the entire estate of the 1st Appellant devolved on the 2nd appellant by operation of law.

5. Since Respondent No.3, K.Mani @ Arthanari and Respondent No.4 T.P. Subramanian are subsequent purchasers who are formal parties, they have not been arrayed herein.

6. The 2nd Appellant and the contesting respondents (R1, Rajammal and R2, Kuppayee Ammal),



WEB COPY



to sink their differences and to buy peace of mind and bring about complete harmony and goodwill among the family members, have decided to compromise the long-drawn serial litigations that destroy unity and solidarity among their family members and have decided to enter into this Compromise and the said compromise may be recorded.

7. The Settlement arrived at during the discussion in the presence of mediator had engendered to relinquish their interest claimed by the 1st Respondent and 2nd Respondent in the suit property and both the 1st and 2nd Respondents further agree to accept in terms of money, in consideration of such relinquishment without insisting upon an appropriate partition and valuation thereof.

8. Mr.Pradeep, the second appellant sole surviving in the said appeal had accordingly paid a sum of Rs.5,00,000/- (Rupees Five Lakh Only) each to the 1st and 2nd Respondents and the 1st and 2nd Respondents hereby admit and acknowledge the receipt of such consideration and agree that they have no claim, interest, title or right into and upon 2/3rd share in the suit property as a result of the decree passed in O.S.No. 7 of 2008 and that the 2nd Appellant is entitled to 2/3rd share which is allotted to the 1st and 2nd Respondents herein.

9. Mr.Pradeep herein and Respondents 1 and 2 have agreed as full and final settlement that this Joint Memo of Compromise be filed before this Hon'ble Court with a prayer to pass a decree and judgment in terms of this Memorandum of Compromise and have accordingly filed the Joint Memorandum of Compromise.

10.The parties have agreed to bear their respective costs.

11. It is, therefore, prayed that this Hon'ble Court may be pleased to set aside the preliminary decree passed on 24.08.2009 and the final decree passed on 24.04.2015 in O.S.No. 7 of 2008 on the file of learned II Additional Judge, Salem, with reference to the 2/3rd share and pass a decree in terms of this Joint Compromise Memo vide Cl.7



WEB COPY



herein-above and allow this appeal and thus render justice.

Description of Properties

Item-I:-

1. In Salem D, Omalur Sub RD. Omalur Taluk, Karuppur Village, S.No. 128/1B, Punja acre 8.17, Asst. Rs.11.3.0, in this the land within the boundaries of east to Ramasamy Gounder's land, west to Varathappa Gounder's Land, south to Ushen Bee's land and north to S.No.64 within this the land measuring 2.71 acres, Asst. Rs.3.70 with all trees,

2. In Salem D, Omalur Taluk, Vellakkalpatti Village, Re.S.No.64, Punja Acre 5.27, Asst. Rs.8.4.0, in this the land within the boundaries of east to Ramasamy Gounder's land, west to Varathappa Gounder's land, south to the land in S.No.128/1, and north to Sengoda Goundar's land within this the land measuring 1.61 acre, Asst. Rs.2.8.0 with all trees,

3. In Salem D, Omalur Taluk, Vellakkalpatti Village, Re.S.No.64, Southern side, Punja Acre 0.8 cent, Asst. Rs.0.2.0, within the boundaries of west to Varathappa Gounder's land, East and south to Kalianna Gounder's land, and north to Sengoda Goundar's land, in this the thatched house and its door and door frames and its fixtures with all trees,

4. In Salem D, Omalur Taluk, Vellakkalpatti Village, Re.S.No.64, North West corner, Punja Acre 0.6 cent, Asst. R.0.2.0, within the boundaries of east, west, north and south to Ramasamy Gounder's land, in this the well, with motor electricity connection, in this well 1/3rd share with its vari, vaikkal and Thulai on the southern side, with a cart track measuring 10 x 300 lings running east west on the northern side from main road to west Itteri,

Item-II:-

In Salem RD, Omalur Sub RD, Omalur Taluk, Vellakkalpatti Village, Ka.Re.S.No. 49/4B, Punja Acre 3.83, Asst.Rs.04.79, in this the land measuring acre 2.18 within the



boundaries of south to Ponnusamy Udayar's land, west to Jageer limit, north to Siddha Moopan's land and east to Sinthamani's land with all trees, with all its mamool pathway rights.

Item-III:-

In Salem RD, Omalur Sub RD, Omalur Taluk, Karuppur Village, S.No.130/3B, Punja acre 2.78, Asst. Rs.3.50, in this the common half share acre 1.39 cent, in this the well and its Kavalai and Vari with all trees, with the irrigation right from Burn standard quarry channel.

2. Recording the terms of the Joint Memorandum of Compromise dated **25.01.2023 & 13.02.2023**, the Appeal Suit is disposed of. The terms of the Joint Memorandum of Compromise shall form part of the decree. No costs.

21.02.2023

msm

Index : Yew/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

V.BHAVANI SUBBAROYAN, J.

msm



WEB COPY

To

1. The Additional District Judge,
[Fast Track Court No.I], Salem.
2. The Section Officer, High Court, Madras.

A.S.No. 1087 of 2009

21.02.2023