



A.S.No.472 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **01.02.2023**

CORAM:

THE HON'BLE MR.JUSTICE S.M. SUBRAMANIAM

A.S.No.472 of 2021

and

C.M.P.No.18559 of 2021 in A.S.SR.No.98812 of 2021

A.S.No.472 of 2021

Murugesan

... Appellant

Versus

1.Nallammal

2.Pavayee Ammal

3.Kanagambal

... Respondents

Prayer: Appeal Suit filed under Section 96 of C.P.C., praying to set aside the Judgment and Decree passed in O.S.No.80 of 2016 dated 08.11.2018 by the learned Additional District Judge, Namakkal and dismiss the suit.

For Appellant : Mr.K.P.Jotheeswaran

For Respondents : Mr.R.Nalliyappan
for R1

Mr.K.P.Sureshkumar
for R2 & R3



A.S.No.472 of 2021

C.M.P.No.18559 of 2021

WEB COPY

Nallammal

... Petitioner

Versus

1.Pavayee Ammal

2.Kanagambal

3.Murugesan

... Respondents

Prayer: Civil Miscellaneous Petition has been filed under Order 41 Rule 3(A) of CPC, praying to condone the delay of 426 days in filing the above first appeal against decree and judgment dated 08.11.2018 passed in O.S.No.80 of 2016 on the file of the Additional District Court, Namakkal pending disposal of the above appeal.

For Petitioner : Mr.R.Nalliyappan

For Respondents : Mr.K.P.Sureshkumar
for R1 & R2
Mr.K.P.Jotheeswaran
for R3

COMMON JUDGMENT

The Appeal Suit is filed to set aside the Judgment and Decree passed in O.S.No.80 of 2016, dated 08.11.2018, by the learned Additional District Judge, Namakkal.



A.S.No.472 of 2021

WEB COPY

2.The parties in A.S.No.472 of 2021 have filed a joint memorandum of compromise dated 12.01.2023 signed by the parties and the parties are also present before this Court. The Bank Demand Drafts as detailed in the joint memorandum of compromise are handed over to the parties concerned and the parties to this Appeal Suit have also acknowledged the same and thus, the Appeal Suits are to be disposed of, as the issues have been settled.

3.The joint memorandum of compromise filed by the parties is extracted hereunder :

“JOINT MEMORANDUM OF COMPROMISE

(Parties are referred to as per A.S.No.472 of 2021)

1. It is submitted that the 1st Respondent herein filed a suit against the Appellant and 2nd & 3rd Respondents herein in O.S.No.80 of 2016 on the file of the Additional District Judge, Namakkal seeking for a relief of preliminary decree for partition to get 5/16 share over the suit schedule properties by metes and bounds and to get permanent injunction restraining the defendants not to interfere the suit schedule mentioned property till disposal of the suit.

2. It is submitted that after trial the Learned Additional District Judge, Namakkal passed preliminary decree the above suit by a Decree and Judgment dated 08.11.2018.



A.S.No.472 of 2021

Aggrieved by the said Judgment and Decree of the Learned Additional District Judge, Namakkal made in O.S.No.80 of 2016 dated 08.11.2018 the Appellant herein preferred an appeal in A.S.No.472 of 2021 before this Hon'ble Court.

3. It is submitted that aggrieved by the said Judgment and Decree of the Learned Additional District Judge, Namakkal made in O.S.No. 80 of 2016 dated 08.11.2018 the Plaintiff therein viz, Nallammal, wife of Duraisamy preferred an appeal in A.S.SR.No.98812 of 2021.

4. It is submitted that pending the above Appeal the parties to the litigation have arrived at a settlement in respect of the suit schedule properties of following terms;

i) That the Appellant shall have title over of the entire Plaint schedule mentioned properties.

ii) That the Appellant shall in consideration thereof has paid an amount of Rs.20,00,000/- (Rupees Twenty Lakhs Only) to the 1st Responder (D.Nallammal) in lieu of the compromise entered into herewith by way of two demand drafts (i)demand draft No.452155, dated 23.01.2023, drawn State Bank of India, Tiruchengodu, for an amount of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) (ii) demand draft No.452156, dated 23.01.2023, drawn State Bank of India, Tiruchengodu, for an amount of Rs.5,00,000/- (Rupees Five Lakhs Only)

iii) That the Appellant shall in consideration thereof has paid an amount of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) to 2nd and 3rd Respondents in lieu of the compromise entered into herewith by way of (i) demand draft No.452153, dated 23.01.2023, drawn State Bank of India, Tiruchengodu, for an amount of Rs.50,000/- (Rupees Fifty Thousand Only) to the 2nd respondent (Pavayee) in A.S.No. 472 of 2021 (ii) demand draft No.452154, dated 23.01.2023, drawn



WEB COPY



A.S.No.472 of 2021

State Bank of India, Tiruchengodu, for an amount of Rs. 1,00,000/- (Rupees One Lakh Only) to the 3rd respondent (Kanagammal) in A.S.No. 472 of 2021.

iv) That the 1st Respondent shall not claim any right whatsoever over the Plaint schedule mentioned properties. And the 2nd and 3rd Respondents who have been set exparte before the Learned Additional District Judge, Namakkal made in O.S.No.80 of 2016 has also relinquished their claim of right whatsoever over the suit schedule property.

v) That the Appellants shall be entitled to peaceful possession and enjoyment over the plaint schedule mentioned properties.

vi) That the Respondents 1 to 3 shall not interfere with the Appellant peaceful possession and enjoyment over the plaint schedule mentioned properties. And the Respondents 1 to 3 or their men, agent or anyone representing on their behalf including their legal heirs hereby declare and shall not in future claim any right over the suit schedule property.

In the light of the above mentioned circumstances, it is therefore respectfully prayed that this Hon'ble court may be pleased take this compromise memo on record and may pass a decree and judgment in the above Appeal in A.S.No.472 of 2021 and A.S.SR.No.98812 of 2021 and thus render justice.

Dated at Chennai this the 12th day of January, 2023."

4.In view of the joint memorandum of compromise, the Appeal Suit in A.S.No.472 of 2021 is disposed of. The joint memorandum of



A.S.No.472 of 2021

compromise dated 12.01.2023 shall form part and parcel of the decree to be drawn in A.S.No.472 of 2021.

5.As far as C.M.P.No.18559 of 2021 is concerned, no adjudication is ordered as the delay is yet to be condoned. Accordingly, C.M.P.No.18559 of 2021 and A.S.SR.No.98812 of 2021 stand closed. There shall be no order as to costs.

01.02.2023

Index: Yes
Speaking Order
Neutral Citation Case: Yes
sp

To

The Additional District Court, Namakkal.



WEB COPY



A.S.No.472 of 2021

S.M. SUBRAMANIAM, J.,

sp

A.S.No.472 of 2021
and
C.M.P.No.18559 of 2021 in A.S.SR.No.98812 of 2021

01.02.2023