



*S.A.(MD).No.114 of 2017*

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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.12.2023**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.114 of 2017

and

C.M.P.(MD)No.1961 of 2017

Palaniyappan (Died)

1.Sundaresan

2.Ramasamy

... Appellants

/Vs./

Sihappy

...Respondent

**PRAYER:** Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 24.02.2015, made in A.S.No.11 of 2012 on the file of the District Judge, Sivagangai, reversing the Judgment and Decree in O.S.No.28 of 2009, dated 14.03.2012, on the file of Subordinate Judge, Sivagangai.

For Appellants : Mr.S.Muthumalai Raja

For Respondent : Mr.M.Kaliraj

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## **JUDGMENT**

Pending second appeal, this Court directed the parties to settle the issue. The Learned Counsels appearing on both sides took earnest effort to amicably settle the issue and the parties have settled themselves. To this effect, a compromise memo is filed

2. It is submitted that the respondent is bed ridden and has instructed her husband to record the compromise and the respondent have filed an affidavit to this effect.

3. The Joint Compromise Memo is extracted hereunder:

### *“JOINT COMPROMISE MEMO*

*1. It is humbly submitted that the respondent/ Plaintiff originally preferred a suit against the Palaniyappan (the father of the present appellants) in O.S. No. 28 of 2009 before the Sub-Court Sivagangai and the same was dismissed vide Judgment and Decree dated 14.03.2012. The appeal preferred by the respondent herein challenging the said Judgment and Decree came to be allowed and the suit was decreed in favour of the respondent herein vide Judgment and Decree made in [A.S.No. 11](#)*



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*of 2012 dated 24.02.2015 on the file of the Principal District Court, Sivagangai. Pending the Appeal Suit, the appellant's father Palaniyappan died and hence the appellants herein were brought on record as the legal heirs of the deceased Palaniyappan. Aggrieved by the Judgment and Decree of the First Appellate Court, the appellants preferred the subject Second Appeal before this Hon'ble High Court.*

*2. It is humbly submitted that during the pendency of the subject Second Appeal, a compromise was entered into on 07.12.2023 between the parties. It is pertinent to mention here that Sihappy (Respondent) is bed ridden due to a Fire Accident and hence, she is not able to appear before this Hon'ble Court. Hence, the respondent herein authorized her husband namely Vairavan to settle the issue and he also appeared before this Hon'ble Court on earlier occasions.*

*3. It is humbly submitted that according to the parties, the sum accrued as on 07.12.2023 arising out of the subject loan transaction comes to a sum of Rs. 6,80,357/- (As per calculation memo dated 07.12.2023 filed by the respondent in the subject second appeal). Likewise, the amount due to be paid by the respondent's husband namely Vairavan towards rent payable as per the rent agreement between the deceased Palaniappan and the respondent's husband Vairavan comes to a tune of Rs.*



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3,11,000/- (As per calculation memo dated 07.12.2023 filed by the appellants in the subject second appeal). Now both the parties decided to right-off the respective due amounts as mentioned above.

4. It is humbly submitted that the respondent's husband namely Vairavan is occupying the shop premises situated at D. Nos. 4/15, 4/16 and 4/17 situated at Amman Sananthi Street, Keelasevelpatti, Thirupathur Taluk, Sivaganga District as a tenant vide above rent agreement. The respondent's husband Vairavan do hereby agree to vacate the godown situated at D. No. 4/16 and hand over the possession to the appellants on or before 31.03.2024. The remaining two shops situated at D. Nos. 4/15 and 4/17 shall be vacated and its possession shall be handed over to the appellants on or before 31.12.2026 on terms that the advance amount a sum of Rs.65,000/- under the above rental agreement shall be paid by the appellants to the respondent's husband namely Vairavan simultaneously at the time of vacating the shop premises. The respondent further agree that the revised rent a sum of Rs. 3,000/- would be paid every month commencing from the month of January, 2024 till the respondent's husband vacate the shop premises.



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*5. Accordingly, appellants and the respondent and the respondent's husband namely Vairavan settled the issues between them amicably by agreeing for the following conditions:*

*i) The respondent's husband namely Vairavanshall vacate the godown bearing D. No.4/16 situated at Amman Sananthi Street, Keelasevelpatti, Thirupathur Taluk, Sivagangai District within 3 months, i.e., on or before 31.03.2024.*

*ii) The respondent's husband namely 'Vairavan' shall vacate the remaining 2 shops situated at D. Nos. 4/15 and 4/17 at Amman Sananthi Street, Keelasevelpatti, Thirupathur Taluk, Sivaganga District and hand over its possession to the appellants on or before 31.12.2026.*

*iii) The respondent's husband agrees to pay the revised rent a sum of Rs.3,000/- every month commencing from 01.01.2024 till vacating of the shop premises situated at D. Nos. 4/15 and 4/17 at Amman Sananthi Street, Keelasevelpatti, Thirupathur Taluk, Sivaganga District.*

*iv) The appellants shall return the advance amount a sum of Rs. 65,000/- to the respondent paid under the rental agreement between the respondent's husband Vairavan and deceased 'Palaniyappan' simultaneously at the time of vacating the shop*



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*premises situated at D. Nos.4/15 and 4/17 at Amman Sananthi Street, Keelasevelpatti, Thirupathur Taluk, Sivaganga District.*

*v) The appellants and respondent agrees to write-off the amount due under the subject loan transaction a sum of Rs. 6,80,357/- payable to the respondent entirely towards the arrears of rent due a sum of Rs. 3,11,000/- to be paid by the respondent's husband namely Vairavan. The appellants and the respondent or the husband of the respondent shall not make any claim with respect to above amount in future.*

*vi) The appellants hereby undertake that they will not pursue the suit in [O.S.No. 129](#) of 2006 on the file of the District Munsif Cum Judicial Magistrate, Thiruppattur filed by their father namely 'Palaniyappan' against the husband of the respondent namely 'Vairavan' which was dismissed for default on 06.07.2016.*

*vii) The respondent and his wife are agreed to appear before the Sub-Registrar Office, Thirupathur and revoke the mortgage which was registered on 17/04/1997.*

*6. The appellants, respondent and her husband namely Vairavan' agreed for the above terms of compromise on their own volition without any compulsion from any others.*



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*Hence it is therefore humbly prayed that this Hon'ble Court may be pleased to accept the compromise memo and may pass the suitable orders in the subject Second Appeal and thus render justice.*

*Dated at Madurai on this day of December 2023*

*-Signed-*

*Appellant*

*-Signed-*

*Counsel for Appellant*

*-Signed-*

*Respondent*

*-Signed-*

*Counsel for Respondent”*

4. The second appeal is disposed of based on the joint compromise memo. The joint compromise memo shall form part and parcel of the Judgment and Decree. The Lower Court Judgment and Decree is modified to the extent stated in the joint compromise memo.

5. No costs. Consequently, connected miscellaneous petition is closed.

**11.12.2023**

Index : Yes / No

NCC : Yes / No

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**TO:**

1. District Judge, Sivagangai
2. Subordinate Judge, Sivagangai.
3. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**S.SRIMATHY, J.**

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Judgment made in  
**S.A.(MD)No.114 of 2017**

Dated:  
**11.12.2023**