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O.S.A.No.298 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P. DHANABAL

O.S.A.No.298 of 2020

C.M.Dhinakaran @ Suresh

... Appellant

Vs.

Chandra Sundararaj (died)

1.S.Annapoorna

(Amended as per order in A.No.775 of 2005, dated 21.03.2006)

2.Hi-Tech Spun Vessels represented
by its Proprietrix K.Avani
W-163, Flat No.4,
Eden Park Apartments,
Park Road, Anna Nagar Western Extn.,
Chennai – 600 101.

3.N.N.Balasubramanian
Proprietor, Super Tech,
No.38F, Thiruvallur Street, Venkatram Nagar,
Korattur, Chennai – 600 080.

... Respondents

(Amended as per order in A.No.5562 of 2003 dated 17.09.2009)



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Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules and Clause 15 of the Letters Patent against the judgment and decree dated 14.10.2019 in C.S.No.422 of 2001 on the file of this Court.

For Appellant : Mr.K.Harishankar

For R1 : Mr.T.S.Baskaran

For R2 : No appearance

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

Though the Appeal is filed against 1st respondent and few others, it is now reported by the learned counsel for the appellant that the Appeal has been given up as against respondents 2 and 3. Hence, this Original Side Appeal is dismissed as against respondents 2 and 3.

2.The appellant and 1st respondent have entered into a compromise and a memo of compromise dated 29.10.2024 signed by the parties in the presence of their respective counsel, is produced before this Court.



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3.Learned counsel for the appellant and 1st respondent have jointly requested this Court to record the compromise and dispose of the Appeal in terms of the compromise memo. Parties are also present before this Court and they have been identified by their respective counsel. They have acknowledged their signature in the memo of compromise. In the compromise memo, the parties have agreed that the decree passed in T.O.S.No.33 of 2008 may be confirmed and the connected Appeal in O.S.A.No.297 of 2020 may be dismissed as withdrawn. As regards, the partition suit in C.S.No.422 of 2001, parties agreed that decree may be altered in terms of memo of compromise. As per the terms of compromise, the parties have further agreed as follows :

“4.The Appellant and the Respondent No.1 after discussions, at the instance of their respective Counsel, have agreed to the following terms of the compromise in this Appeal. The terms of compromise are as follows:-

- a) The suit Schedule A Property is a flat bearing no. 5 in second floor of the building at No. 327, Poonga Apartments, Second Avenue, Anna Nagar, Chennai - 600*



040, with a flat area of 525 sqft along with proportionate 745 sqft of undivided share of land, after Chennai Metro rail acquisition.

- b) The parties have agreed that the value of the flat mentioned in A - Schedule is Rs. 75,26,025/- (Rupees Seventy Five Lakhs twenty six thousand and twenty five only) (745 sqft uds + 525 sqft flat area). For the purpose of this compromise, a sum of Rs. 39,00,000/- (Rupees thirty nine lakhs only), which is the compensation received from Chennai Metro Rail is also added for division between the parties. After discussions between the parties, the value of Schedule - A property for the purpose of this compromise was finalised as Rs. 1,14,26,025/- (Rupees one crore Fourteen lakhs Twenty six thousand and twenty five only).
- c) Pursuant to the acquisition of a portion of land in Schedule A by CMRL, the Poonga Apartment owners Association, Appellant and CMRL settled for a compensation of 43 lakhs for 42 persons (vide Lok Adalat order dated 10/02/2018 in L.A.O.P 23/2012) out which a sum of Rs 28,70,497.00 with interest is lying in Court deposit. The Appellant has already received and



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utilized a sum of Rs 15 lakhs given by CMRL in February 2018.

- d) The parties agree that suit A -Schedule property will be allotted to the Appellant. In lieu of the allotment of A-Schedule property to the Appellant, the Appellant Pays a sum of Rs 26,00,000/- (Rupees Twenty six Lakhs) to the 1st Respondent/ 2nd Plaintiff Mrs. S. ANNAPoorana by DD No.799494, Dated 02/09/2024, drawn on Indian Bank, Anna Nagar Branch, Chennai on the date of signing of this Memorandum of Compromise.*
- e) In addition to the above, in lieu of the allotment of A-Schedule to the Appellant, the 1st Respondent is entitled to receive the sums of money lying in court deposit, which is a sum of Rs 32,09,244 with accrued interest (less government commission and audit fees) according to the funds certificate dated 4/10/24. The Appellant consents for the 1st Respondent/2nd Plaintiff to withdraw the said sum of Rs.32,09,244/- with accrued interest thereon (Rupees thirty two lakhs nine thousand two hundred and forty four (approx.) lying in court deposit and the Appellant shall accord his no objection, in the payment out application filed by the 1st Respondent/ 2nd plaintiff for withdrawal of the above said money lying to*



the credit of the suit in C.S. 422/2001.

- f) The Appellant /1st Defendant C.M.Dhinakaran is from this date, entitled to the suit A- Schedule property absolutely with all the rights of alienation and encumbrance, from the date of recording this Memorandum of Compromise by the Honourable High Court and on receipt of the payments mentioned in clause (d) and clause (e) by the 1st Respondent/2nd Plaintiff, as OWELTY for the A-Schedule Property.*
- g) The Plaintiff Schedule B property is all that piece and parcel of land of an extent of 27,048 sq.ft (12 grounds) bearing Plot No. 57-B (N.P), Ambattur Industrial Estate, Saidapet Taluk, comprised in S. No. 156/1, part of Patravakkam Village and 854/1 part, 854/4 part and 856 part of Korattur Village. The Appellant is carrying on business activities in a portion of the Schedule B land and the Appellant has sold substantial portions of B- schedule an extent of about 18,232 sq.ft., and what remains unsold as of today is an extent of 3.67 grounds (8,816 sq.ft). In order to accord a quietus to the dispute, the 1st Respondent has been advised to agree to receive a Sum of Rs 60,00,000/- (Rupees Sixty Lakhs only) towards the share allottable to late Mrs. Chandra*



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Sundararaj and the 1st Respondent/2nd Plaintiff gives up all her claims in respect of B- Schedule property.

- h) The Appellant shall pay a sum of 60,00,000/- (Rupees Sixty lakhs only) to the M/S SUNDARARAJ AND CHANDRA MEMORIAL TRUST Regd No. 62/2023 formed in the name of Late Sri C.M Sundararaj, by the 1st Respondent according to the wishes of the deceased mother Mrs. Chandra Sundararaj as per her Will dated 19.04.2004, forming subject matter of OSA 297/20 against TOS 33/2008 in full settlement of the share of Late Mrs. Chandra Sundararaj and the Executor named in the Will shall confirm receipt of the same. The Appellant pays the above sum of Rupees sixty lakhs only in the name of the M/S SUNDARARAJ AND CHANDRA MEMORIAL TRUST (PAN NO:ABGTS4004B) by way of DD no 799473 dated 27/08/2024 for a sum of Rs forty lakhs and by DD no 799493 dated 02/09/2024 for a sum of Rs Twenty lakhs, both DD's drawn on Indian Bank, Anna Nagar, Branch, Chennai and handed over to the executor Mr. L.N. Praghasam, named in the Will and the receipt of the said sum is hereby Acknowledged by the Executor and the above two DD"s is handed over to the 1st Respondent/Managing Trustee of the above*



SUNDARARAJ AND CHANDRA MEMORIAL TRUST.

- i) *The Appellant /1st Defendant C.M. Dhinakaran is from this date entitled to the suit B- Schedule property absolutely with all the rights of alienation and encumbrance and there would be no right or claim by the 1st Respondent/2nd Plaintiff and the Executor named in the Will of Mrs. Chandra Sundararaj over Schedule B Property, and also on the Sold Portions of Schedule-B by the Appellant to the Respondents 2 and 3 after the above mentioned payment of Rs. 60,00,000/- (Rupees Sixty Lakhs is paid to M/S SUNDARARAJ AND CHANDRA MEMORIAL TRUST as per clause(h) above.*
- j) *Plaint Schedule C Property comprising of a ground floor flat with an undivided share of land of an extent of 230 sqft of land out of the total extent of 920 sqft, together with a flat in Plot No. AP 177, (Now AE BLOCK door no 59/1) 10th Main Road, 5th street, Anna Nagar, Chennai 600 040, and the flat with a built up area of 714 sqft together with 15% common area and front portico of 60 sqft, shall be absolutely owned by the First Respondent/ 2nd Plaintiff, S. Annapoorana from the date of signing this compromise and passing of the Compromise Decree, with all rights of alienation and*



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the Appellant shall have no right, claim or interest in Schedule C property.

k) The Parties hereby agree that Plaintiff Schedule D Property namely, vacant land bearing Plot No. 13, New No. 19, situate at Sri Sabari Nagar, Vadaperumbakkam Village, shall be allotted to S. Annapoorana/ 1st Respondent, with all rights of alienation and encumbrance, The 1st Respondent shall effect sale of the D schedule property and pay a sum of Rs. 40,00,000/- (forty lakhs only) to M/S SUNDARARAJ AND CHANDRA MEMORIAL TRUST. The Appellant, Dhinakaran shall join as confirming party/vendor as abundant caution only and does not receive any sale consideration in the Sale Deed and the expenses for execution and registration of the Sale Deed shall be borne by the prospective buyer. The Appellant shall sign necessary forms and cooperate in giving no objection for transfer of patta and mutation of the revenue records, for the prospective buyer, whenever need arises.

l) The Appellant shall accord his No-Objection in the Court for Return of Original Documents of Schedule-D property and Schedule -C property to the 1st



Respondent and the 1st Respondent shall accord her No objection for the return of the original of the Schedule B property to the Appellant.. These will be done on the date of filing of this Memorandum of Compromise. The 1st Respondent, Appellant and the Executor shall cooperate for the sale the Schedule-D property to pay M/s SUNDARARAJ AND CHANDRA MEMORIAL TRUST a sum of Rs 40,00,000/- (forty lakhs only) out of the sale proceeds, and the 1st Respondent shall pay the capital gains tax.

- m) Any incidence of capital gains in respect of sale of B-schedule is to be borne by the Appellant and that of D-Schedule shall be borne by the 1st Respondent.*
- n) The parties have agreed that to give effect to the above terms of Memorandum of Compromise, they shall take immediate steps including any documents to be executed and registered by the respective parties and the cost to be borne by the respective parties who take the property absolutely under this Compromise.*
- o) The appellant shall withdraw the OSA 297/20 filed against TOS33/2008 in view of the compromise arrived at by the parties in the OSA 298/2020 filed against the Decree in the suit CS 422/2001 and Probate shall be*



issued to the Executor named, in accordance with the Decree in TOS 33/2008 and after excluding the said Suit Schedule properties A to D which forms the subject matter of this compromise. The Appellant and first respondent herein accept and confirm that the Executor is entitled to effect sale of the testatrix Mrs Chandra Sundararaj's property of about 5 acres of wet land at Vaipur Village Tiruvarur and the testatrix Mrs Chandra Sundararaj's share of property, at No 6, Durgai Sannadhi Street, Tiruvarur and hand it over to the persons mentioned in the Will as per the wishes of late Chandra Sundararaj, and the Executor shall execute such documents as is necessary and required to effect the sale of the said two properties. The Appellant and 1st Respondent consent to cooperate with the other co-owners, Executor in execution of Sale Deeds, if necessary and as requested by the Executor, whenever sale is to be effected.

- p) The compromise above arrived at may be recorded as a final decree between the parties in the suit and final decree may be passed, which shall be engrossed on stamp paper and registered as per law by the Appellant/1st Defendant and 1st Respondent/2nd*



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Plaintiff and the memorandum of compromise shall form part of the decree.

It is therefore prayed that this Hon'ble Court may be pleased to pass a decree in the following terms:

- 1. The decree passed in TOS 33/2008 may be confirmed and OSA 297/2020 shall be dismissed as withdrawn.*
- 2. The Partition suit in C.S.422/2001 shall stand decreed in terms of the Memo of Compromise and the memo of Compromise shall form part of the decree.”*

4. Therefore, this Original Side Appeal is disposed of in terms of the compromise memo dated 29.10.2024. The said memo of compromise shall form part of the records. No costs.

(S.S.S.R., J.) (P.D.B., J.)
22.11.2024
(2/2)

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Note to Registry :

Issue order copy on or before 05.12.2024.

Internet : Yes

Index : Yes / No



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Neutral Citation : Yes / No

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and
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