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S.A(MD)No.1175 of 2005

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **27.09.2024**

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.1175 of 2005

1.Soundaranayaki alias Sakundala (died)

2.S.Suresh (died)

3.S.Senthil

4.Sekar

5.Baskaran

6.Gurumurthy

7.Lakshmi alias Muthulakshmi

... Appellants/Respondents 1, 3, 4, 6 to 9/
Defendants 1, 3 & 4 & Nil

8.Nithyakalyani

9.Poopase Saminathan

... Appellants 8 & 9/
Lrs of the deceased 2nd appellant

10.Radha

... 10th Appellant

(Appellants 2 & 3 are recorded as Lrs of the deceased
1st appellant vide order dated 13.08.2014)

(Appellants 8 & 9 are brought on record as Lrs of the deceased
2nd appellant vide order dated 02.09.2024
in C.M.P(MD)Nos.4317 to 4320 of 2024)

(10th Appellant is impleaded as per the order of this Court
dated 02.09.2024 made in C.M.P(MD)No.4332 of 2024)

Vs.

1.T.Arunachalam Chettiar (died)... Respondent/Appellant/Plaintiff

2.A.Murugesan

... 2nd Respondent/Lr of the 1st respondent

(2nd Respondent is brought on record as Lr of the deceased
first respondent vide order dated 02.09.2024 made
in C.M.P(MD)Nos.4322, 4326 & 4328 of 2024)



S.A(MD)No.1175 of 2005

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 23.09.2004 made in A.S.No.100 of 2000 on the file of the Sub Court, Paramakudi, reversing the judgment and decree dated 23.07.1999 made in O.S.No.20 of 1993 on the file of the District Munsif Court, Paramakudi.

For Appellants 3 to 7 : Mr.M.Rajaraman

For R – 2 : Mr.M.Saravanan

JUDGMENT

Heard the learned counsel appearing for the appellants 3 to 7 and the learned counsel appearing for the second respondent.

2.The learned counsel appearing on either side submitted that appellants 4 to 7 are given up and the same may be recorded.

3.The said statement is placed on record.

4.The learned counsel appearing on either side submits that the matter has been amicably settled between the parties and they have also filed a compromise memo dated 27.09.2024. The joint compromise memo is found to be signed by both the parties, except the appellants 4 to 7, along with the counsel on record and a scanned reproduction of the same is as follows:



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8. Nithyakanyani,
W/o. Late. Suresh.

9. Poopase Saminathan,
S/o. Late. Suresh.

10. Radha,
W/o. Senthil.

Petitioners 8 to 10 are residing at
Door No.4/75, Mutthalamman Kovil
South Car Street,
Paramakudi Town,
Ramanathapuram District.

... Appellants

(The appellants 4 to 7 are given up)

-Vs-

1. T.Arunachalam Chettiar (Died)

2. A.Murugesan,
S/o. Late. T.Arunachalam Chettiar,
Door No.3/240, Mohamed Ali Street,
Paramakudi,
Ramanathapuram District.

... Respondents

COMPROMISE MEMO

The deceased 1st respondent, T.Arunachalam Chettiar, filed O.S.No.20 of 1993 on the file of District Munsif's Court, Paramakudi, against the 1st appellant and her three children, namely the appellants 2 & 3 and S.Murugesan for declaration declaring that he is the owner of the 1st item of the suit property and for consequential recovery of possession of 1st item and for mandatory injunction to remove the windows, entrance and other openings in the 2nd schedule property and for permanent injunction restraining the appellants 2 & 3 and S.Murugesan from making any new opening in the 2nd schedule property. The suit was dismissed by the trial court

x *[Signature]* x S. Pauline

x *[Signature]*

x *[Signature]*

[Signature]



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mainly on the grounds of non-joinder of necessary parties, namely, the legal heirs of Gandhi, brother of the 1st appellant's husband. Challenging the same, the 1st respondent filed the appeal in A.S.No.100 of 2000 on the file of Sub Court, Paramakudi and impleaded the appellants 4 to 6, who are the legal heirs of Gandhi. The appeal was allowed, holding that the 1st respondent is the owner of the subject land, and the decree for recovery of possession in respect of the 1st item and mandatory injunction and permanent injunction in respect of the 2nd item was granted. During the pendency of the proceedings, appellants 1, 2 and Murugesan died, and their legal heirs were brought on record as appellants 7 to 9. After the demise of the 1st respondent, his son, the 2nd respondent herein, was brought on record as a legal heir. A small lane between the properties of appellants and respondents is the subject matter of the present litigation. In a family partition between the appellants 1 to 3 and appellants 4 to 6, the house property bearing Door No.4/75, Muthalamman Kovil North Car Street, lying on the east of the suit property, was allotted to the share of the appellants 1 to 3 and Murugesan. Hence, the appellants 4 to 6 are not necessary parties and are given up in the appeal. The 7th appellant executed a sale deed dated 06.06.2005 selling her undivided 1/3rd share in the house property bearing Door No.4/75, Muthalamman Kovil North Car Street, in favour of the 8th appellant and Radha, wife of the 3rd appellant. Hence, Radha has been impleaded as the 10th appellant. Since the 7th respondent has sold her right in the house property bearing Door No.4/75, Muthalamman Kovil North Car Street, she is given up in the appeal. As the litigation has been pending for several years, close relatives and well-wishers have advised the parties to settle the matter. Now, the appellants 3, 8 to 10 and the 2nd respondent have decided to settle the matter on the following terms:

* S. Radha * S. Radha

* S. Nithya

* S. Poofan Srinathan



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1. The Appellants 3, 8 to 10 admit that the 2nd respondent is the absolute owner of the property lying on the west of 'EC' point mentioned in the Commissioner's Sketch dated 02.12.1998 marked as Ex.C2 in the suit in O.S.No.20 of 1993 on the file of District Munsif's Court, Paramakudi and they admit the right, title and possession of the 2nd Respondent in respect of the property lying on the west of 'EC' point. Appellants 3, 8 to 10 have removed the entire 'EFGC' wall and constructed a new wall on the east of 'EC' point without making any opening.

2. The Appellants 3, 8 to 10 hereby undertake that they will not make any opening or put up sunshade in the 'EC' wall. The Cornish mentioned in the Ex.C2 have already been removed, and Appellants 3, 8 to 10 undertake that they will not claim any right over the property situated on the west of 'EC' point subject to the below-mentioned clause.

3. The 2nd Respondent reconstructed his house situated on the west of 'EC' point. Now, as a goodwill measure, the 2nd Respondent hereby conveys his right, interest and title in respect of the 'Z C1 C Z1' portion, measuring 9 feet north-south and 20 inches east-west, mentioned in the Rough Sketch filed along with the compromise memo, situated on the west of 'EC' point abutting 'C' point. The Appellants 3, 8 to 10 do not have any right to make any opening in the 'Z C1 C Z1' portion. Appellants 3, 8 to 10 can annex the above 'Z C1 C Z1' portion along with his property. The Appellants 3, 8 to 10 admit that they do not have any right over the property situated on the west of 'E C1 Z Z1 C' points, and they will not claim any right over the same. The parties accept the Rough Sketch filed along with

* B. Senthil

* S. Padma.

* S. Nishan

* S. Poo Padma Sankaran



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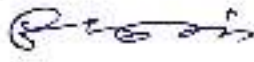
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his compromise memo. The Rough Sketch and Commissioner Sketch (Ex.C2) may be treated as part of this compromise memo.

4. The parties agree to bear their respective cost of the proceedings.

Dated at Madurai on this the 27th day of September-2024

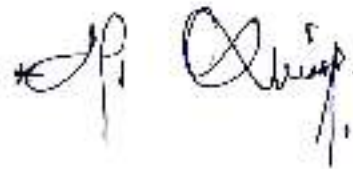
+ 

+ S. Nithyan

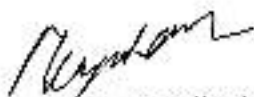
+ S. Poosani Srinathan

+ S. Radha.

Appellants 3, 8 to 10



2nd Respondent

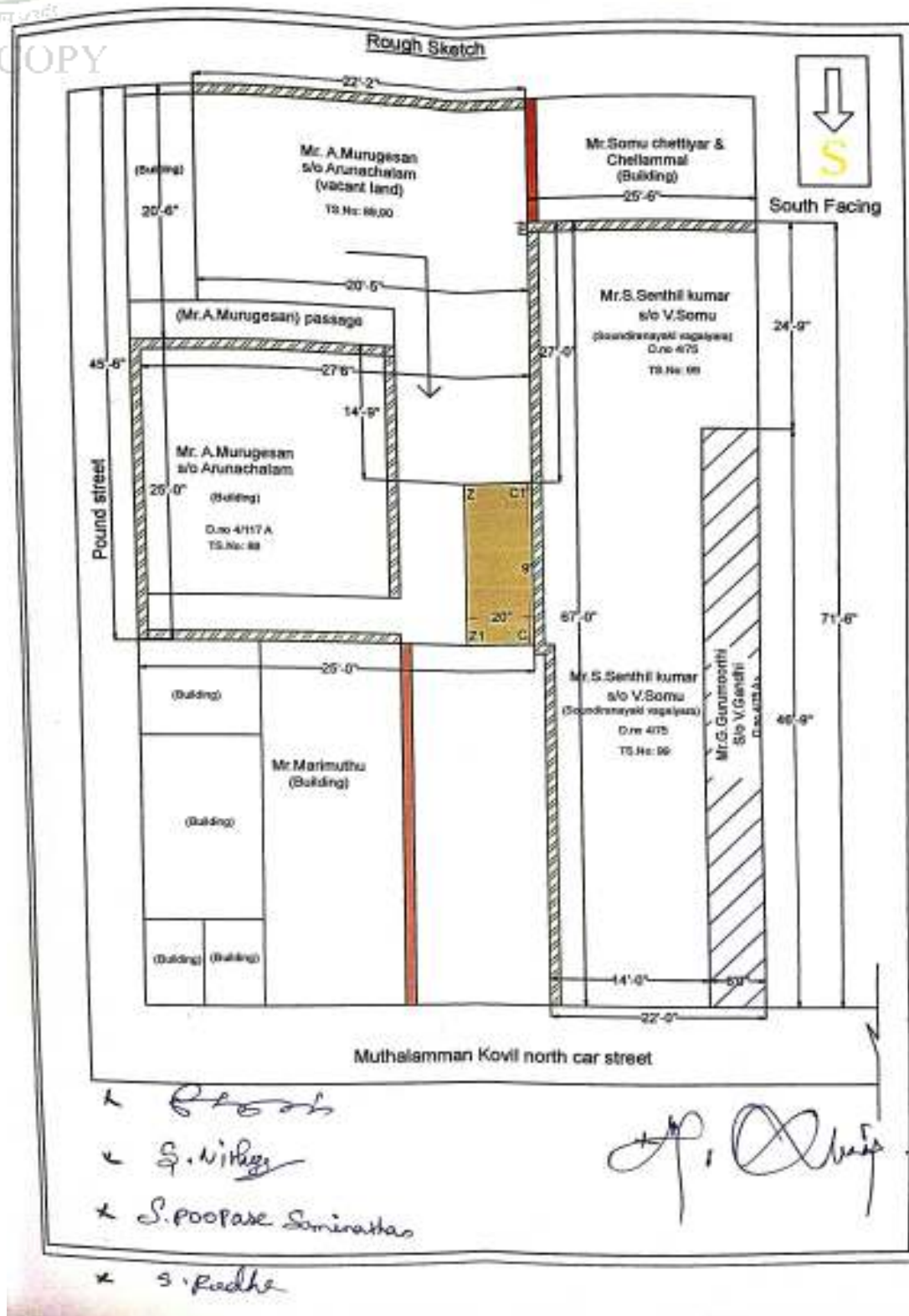

Counsel for Appellants 3, 8 to 10
22/9/24

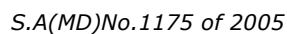

Counsel for 2nd Respondent



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5. Accordingly, the Second Appeal is disposed of in terms of the compromise memo dated 27.09.2024 and there will be a decree accordingly. The compromise memo, dated 27.09.2024, shall form part of the decree. No costs.

27.09.2024

NCC : Yes/No
Index : Yes/No
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To

1.The Sub Court,
Paramakudi.

2.The District Munsif Court,
Paramakudi.

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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Judgment made in

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