



S.A(MD).No.47 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.04.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

**S.A(MD)No.47 of 2022
and
C.M.P(MD)No.500 of 2022 and
C.M.P(MD)Nos.430 and 644 of 2023**

1.Kodiyan @ Pavanathan
2.Tittin ... Appellants / Appellants / Plaintiffs

Vs

1.Muthukutti (Died)
2.Marimuthammal (Died)
3.Saroja
4.Palavesathammal
5.Sumathi
6.Peratchi Selvi
7.Lakshmi
Nagamani (died)



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8.Senthi

9.Srirenganathan

10.K.Perumal

11.Hitler

12. Alexander

13.Parasakthi

(Respondent Nos.11 to 13 are brought on record as legal representatives of the deceased R1 vide Court order dated 03.02.2021)

14.P.Paulraj

15.R.Chelladurai

16. S.Devaki

17. The President, Keelanatham Panchayat,
Palayamkottai Taluk,
Palayamkottai Panchayat Union,
Tirunelveli - 627 353.

18. Joint I Sub Registrar,
MDR 178, Kokkirakulam,
Palayamkottai, Tirunelveli - 627 009.

(R14 to R18 are impleaded as party respondents vide Court order dated 07.03.2024)



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(1st appellant and 3rd respondent are recorded as the legal representatives of the deceased 2nd respondent vide Court order dated 12.01.2017)

... Respondents / Defendants

Prayer : Second Appeal is filed under Section 100 of CPC., against the judgment and decree dated 13.12.2011 passed in A.S.No.67 of 2010 by the Principal Sub Court, Tirunelveli, partly allowing the judgment and decree dated 10.12.2009 and passed in O.S.No.294 of 2004 by the 2nd Additional District Munsif, Tirunelveli.

For Petitioner : Mr.J.Ravikumar

For R5 : Mr.S.Mani

For R11 and R12 : Mr.M.Senguvijay

For R15 and R16 : Mr.M.Shema Daniel

JUDGMENT

This Second Appeal is filed against the judgment and decree dated 13.12.2011 passed in A.S.No.67 of 2010 by the Principal Sub Court, Tirunelveli, partly allowing the judgment and decree dated 10.12.2003 and passed in O.S.No.294 of 2004 by the 2nd Additional District Munsif, Tirunelveli.



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2. The matter was earlier referred to mediation and a compromise was reached between the parties and a report was also received and the joint compromise memo is also enclosed along with the Mediation report.

The terms of the compromise is as follows:

JOINT COMPROMISE MEMO

The above said Second Appeal has been filed challenging the partial dismissal of the partition suit in respect of Survey No.124/2 and 122/2 in Keelanatham Village, Joint -1 SRO, Palayamkottai, Tirunelveli. This Hon'ble Court was pleased to refer the case for Mediation.

In the mediation, both the parties agreed to settle the disputes between them on the following terms :

1. The Appellants hereby accept the sale deed executed by Paulraj in favour of Chelladurai (R15) and his wife Devaki (R16).

The sale deed is dated 19.08.2019 Doc-No. 4509/2019 registered in Joint-1 SRO, Palayamkottai, wherein an extent of 81 cents in Survey No.124/2 have been transferred to Respondents 15 & 16 herein. And the same has been sub divided in to several plots as per the



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approved layout.

2. The Appellants accept the sale deed executed by Hitler, 11th Respondent herein, in favour of Ms.Malathi who is not party to this second appeal. The sale deed is dated 19.03.2020 Doc-No. 1736/2020 registered in Joint-1 SRO, Palayamkottai, wherein an extent of 18.18 cents in Survey No.124/2 has been transferred to Malathi. The said land has been subdivided as Survey no.124/2A2.

3. The remaining extent of 1 Acre 12 cents, respondents hereby agree that the Appellants are entitled for the said extent of 1 Acre 12 cents in Survey No. 124/2. The respondents hereby confirms that they have not created any alienation, encumbrance, sale agreement or any other transactions in the property allotted to the Appellants herein.

4. In the said 1 acre 12 cents in survey no.124/2, the 1st Appellant is entitled to and put in possession of 68 cents in Survey No. 124/2 and the 2nd Appellant is entitled to and put in possession of 44 cents in Survey No. 124/2. Also an extent of 9 cents in Survey no. 122/2 is hereby allotted to 2nd appellant and he is put in possession of



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the same. A plan is attached herewith regarding the division of property in Survey no.124/2 among the Appellants.

5. The properties allotted to the Appellants are divided by metes and bounds and they agree that they and their branch have no claim against and each other's branch.

6. The Appellants hereby agree that they will not claim any right, possession and title in respect of property of Respondents 15 & 16 and that of Ms.Malathi in Survey no.124/2 as stated above.

7. R.Chelladurai (Respondent 15) and S. Devaki (Respondent 16) hereby agree that the 1st Appellant is entitled for a right of pathway from the main road to reach 68 cents of land allotted to the 1st appellant through east - west pathway road (7.20 meter wide and 29.40 meter length) lying on the northern side of the layout formed in Sy.No.124/2, in an extent of 81 cents.

8. The Respondents or any person claiming under or through them, do not have any rights in the property allotted to the Appellants. Likewise, the Appellants or any person claiming under or through them, do not



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have any claim to the property transferred to R.Chelladurai (Respondent 15), S. Devaki (Respondent 16) and Malathi under Sy.No.124/2. The Respective Branch should work out their right within their branch and they have no claim in the share of other branch in the property allotted in favour of Respondent 15 &16 and Malathi.

9. The successors of original owner Ponnaiya, Viz. Krishnan, Lakshmanan and Puthiyamuthu will abide by the above terms of compromise memo respectively with the property allotted above. None of the branch members has got any right or claims in respect of property purchased by Respondents 15 & 16 and Malathi in survey No. 124/2. The Parties in each branch who are under the Appellants and Respondents 1 to 13 hereby agree that the allotments made in this compromise memo shall bind them and all their siblings and successors and their legal heirs.

10. As per the above terms of compromise, the 1st appellant is taking care of the interest of 3rd respondent who remained ex- parte through out the proceeding and 1st appellant hereby agree that he will settle the claim if any made by 3rd respondent.



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11. Likewise, the 2nd appellant is taking care of the interest of respondent 4 to 6, who remain ex-parte through out the proceedings and as aforesaid, both 1st and 2nd appellant hereby agree that they will take care of the interest of respondent 3 to 6 respectively, if they claim any interest in the survey no. 124/2.

12. Respondents 11, 12, and 13 is taking care of interest of Respondents 7, 8, 9, and 10 falling within their branch who remain ex-parte throughout the proceedings if they claim any interest in Survey No. 124/2 or in S.No. 122/2.

13. Both parties hereby agree that the respondents 17&18 are formal parties, and they need not be parties to the compromise memo in view of and the sale deed in favour of respondent 15 & 16 has been accepted by the appellants.

It is therefore prayed that this Hon'ble Court may be pleased to record this Joint Compromise Memo and pass judgement and decree in the above Second Appeal in terms of the aforesaid Joint Compromise Memo along with the plan attached and thus render justice.



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3. Accordingly, this Second Appeal is allowed and the judgment and decree dated 13.12.2011 passed in A.S.No.67 of 2010 by the Principal Sub Court, Tirunelveli, partly allowing the judgment and decree dated 10.12.2009 passed in O.S.No.294 of 2004 by the 2nd Additional District Munsif, Tirunelveli, is set aside. A decree of compromise is passed in terms of the compromise. No costs. Consequently, connected miscellaneous petitions are closed.

25.04.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No

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To

1. The Principal Sub Court, Tirunelveli.
2. II Additional District Munsif, Tirunelveli.
3. The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

G.ILANGO VAN, J.

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**ORDER
IN
S.A(MD)No.47 of 2022
and
C.M.P(MD)Nos.500 of 2022 and 430 of 2023 and
C.M.P(MD)No.644 of 2023**

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