



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON 07.04.2025	PRONOUNCED ON 23.06.2025
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THE HONOURABLE MR JUSTICE K.KUMARESH BABU

A.No.827 of 2025
in C.S.No.139 of 2024

R.Sangeetha

... Applicant(s)/ 2nd Defendant

Vs

1.Amrath Kavar

... 1st Respondent/ Plaintiff

2.M/S.Sri Guru Mishri Foundation,

Partnership Firm,

Represented by its Partners,

R.Sangeetha and Lakmi Chand Singhvi,

No.72, Jeremiah Road, Vepery,

Chennai – 600 007.

... 2nd Respondent/ 1st Defendant

3.Lakmichand Singhvi

... 3rd Respondent/ 3rd Defendant

For Applicant(s) : Mr.Janardhanan

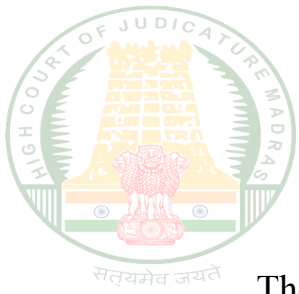
for M/s.G.R.M.Palaniappan

For Respondent(s): Mr.R.Parthasarathy

Senior Counsel

for Mr.Rahul Balaji for R1

: No appearance for RR2 & 3



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ORDER

The suit is filed seeking for partition of the property under Schedule-A and to allot Schedule-C and the Schedule-B properties which form part of the Schedule-A in favour of the plaintiff and the defendants respectively. A prayer had also been made inter-alia claiming damages to a tune of Rs.5,00,000/-. Now the present application had been taken out under Order VII Rule 11 for rejecting the plaint by contending that firstly the property mentioned in Schedule-A had already been portioned as Schedule-B and Schedule-C properties in an earlier round of litigation based upon a compromise entered between the parties and that subsequent to the same, the plaintiffs had filed a suit for bare injunction and mandatory injunction on the very same cause of action. Hence, the present suit would also be hit by principles laid down under Order II Rule 2 of CPC. The same had been contested by the plaintiffs.

2. Heard Mr.Janardhanan, learned counsel for M/s.G.R.M.Palaniappan, learned counsel for the Applicant and Mr. R.Parthasarathy, learned Senior Counsel for Mr.Rahul Balaji, learned counsel for the first respondent.

3. Mr.Janardhanan, learned counsel appearing for the applicant/ second



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defendant would submit that the present suit is not maintainable as no cause of action has arisen for the plaintiff to initiate the present suit. He would submit that the plaintiff along with her husband and a family trust which was administered by them had earlier filed a suit in C.S.No.912 of 2010 seeking for the relief of a declaration to declare the sale deed in favour of the second respondent/ first defendant herein as being null and void and to further declare that they were the absolute owners of the property mentioned in Schedule-B therein and also for a further relief of specific performance to direct the defendants therein to convey the plaint Schedule-A mentioned property which is also the Schedule-A to the suit for a sale consideration of Rs.6,75,00,000/- (Rupees Six Crores and Seventy Five Lakhs Only) and *inter-alia* seeking for a permanent injunction restraining the defendants from interfering with the peaceful possession.

4. The said suit came to be disposed of by a Memorandum of Compromise dated 20.04.2011. He would submit that as per the terms of the said compromise, 50% of the undivided share in the schedule-A property was to be conveyed to the plaintiff therein by the defendants 3 to 5 who are the defendants herein who were entitled to 50% of the share in the superstructure standing in the Schedule-A property which was to be conveyed by the plaintiffs



therein in their favour. Further, various other conditions were also incorporated in the said Memorandum of Compromise.

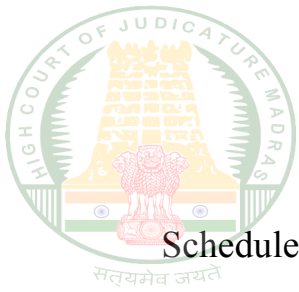
5. He would further submit that a partnership firm was also incorporated pursuant to the said Memorandum of Compromise as between the plaintiffs therein and the defendants. As the said Memorandum of Compromise was not being honored by the plaintiffs therein, the defendants herein had instituted a suit in C.S.No.270 of 2013 seeking for a relief of declaration that the Memorandum of Compromise between the parties to be null and void and for a consequential declaration to declare the Award passed by the Lok Adalat and the order made by this Court and also the partnership deed entered between the parties as null and void. A further declaration was also sought to declare the plaintiffs who are defendants herein as being the absolute owners of the property.

6. He would submit that the said suit was also disposed of pursuant to a Joint Compromise Memo entered between the parties on 28.04.2016 by a judgment and decree dated 29.04.2016. He would submit that this Court had categorically recorded the Report of the learned Advocate Commissioner indicating a delineation of the property in Schedule-A between the plaintiffs



and the defendants therein. He would further submit that this Court had also recorded the physical possession of the respective shares in Schedule-A property. The respective shares of the parties have also been described as Schedule-B and Schedule-C to the compromise decree. He would contend that the said demarcated portion are which form part of a larger extent is only shown as Schedule-A, Schedule-B and Schedule-C in the present suit. Therefore, he would submit that when the property itself had been distributed among the parties, there is no question of a further partition of the property. He would submit that the said compromise decree had not been indexed as per the terms of the compromise.

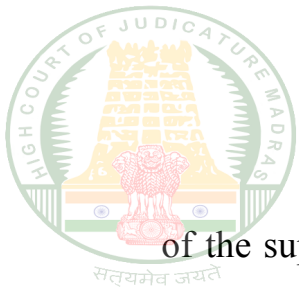
7. He would submit that thereafter, the plaintiff along with her husband had initiated a suit in C.S.No.377 of 2016 where the plaintiffs herein had also specifically averred that the plaintiff had taken over the portion of the properties allotted to them pursuant to the compromise decree and there was an allegation as against the defendants that they have been interfering with their possession of the property and therefore, reliefs of permanent injunction and mandatory injunction were sought for. However, suppressing various material facts by a cleverly drafted plaint, the plaintiff is now seeking for dividing the Schedule-A property by metes and bounds and to allot Schedule-C to her and



Schedule-B to the defendants.

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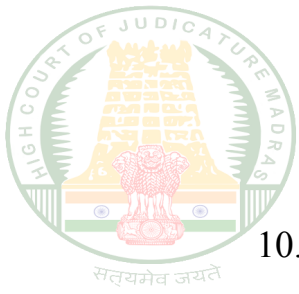
8. He would contend that Schedule-A property, the parties *inter se* are entitled for 50% of the undivided share and with regard to the superstructure, the plaintiff and her husband had already been given possession of the Schedule-C property and the defendants have been given of the Schedule-B property which has also been recorded by this Court while disposing of the suit in C.S.No.270 of 2013. He would submit that the present suit is wholly vexatious and is with ulterior motive. Further, he would submit that if it was the case of the first respondent/ plaintiff that the property had not been allotted to the plaintiffs as per the terms of the compromise decree passed in C.S.No.270 of 2013, the relief of partition that has been sought for in the present suit ought to have also been included in the suit filed by the plaintiff and her husband in C.S.No.377 of 2016. The plaintiff had also not sought for a leave under Order II Rule 2 to sue the defendant for the relief of partition and therefore, he would submit that the suit is also hit by the provisions of Order II Rule 2 CPC. He would further contend that when there was no title that was transferred in favour of the plaintiff/ first respondent there can be no prayer for partition of Schedule-A property. At most the plaintiff would only be entitled for a portion



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of the superstructure which is described under Schedule-B. The present suit is only an abuse of process of Court and this Court would have to nib such suits in the bud or otherwise the defendants would only to harassed. Hence, he has taken out the present application to reject the plaint.

9. In support of his contention, he has relied upon various judgments of the Hon'ble Apex Court in the case of ***Sahu Madho Das and Others Vs Pandit Mukand Ram & Another*** reported in ***AIR 1955 SC 481***. He would contend that there should be a passing of title in favour of a party to assert his title to seek for a relief of partition. In the present case, it is his case that no such title has been passed in favour of the applicant. Further, relying upon the judgment of the Hon'ble Apex Court, in the case of ***Bhoop Singh Vs Ram Singh Major and Others*** reported in ***1995 (5) SCC 709*** and in the case of ***2008 (13) SCC 102***, he would contend that a decree which creates a right or title in a party for the first time cannot be said to be a declaration of the pre-existing right and therefore, such decree would have to be acted upon by execution of necessary documents in favour of the party claiming the title as the same is also compulsorily registrable under Section 17 of the Registration Act.



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10. Further, relying upon the judgment in **1994 (1) SCC 531**, he would contend that a compromise decree passed based upon a Joint Memo of Compromise would have to be sufficiently stamped. Relying upon the said judgment, he would vehemently contend that the consent decree is only a creature of the agreement evidencing the transfer of title and such transfer of title for the first time is compulsorily registerable under Section 17 of the Registration Act by paying appropriate stamp duty as per the Stamp Act. In support of his contentions with regard to the suit being barred by provisions of Order II Rule 2, he had relied upon the judgment of the Hon'ble Apex Court in the case of ***Vurimi Pullarao Vs Vemari Vyankata Radharani*** reported in **2020 (14) SCC 110**. Therefore, he would submit that the present suit would have to be rejected and prays this Court to dismiss the suit.

11. Mr. R.Parthasarathy, learned Senior Counsel, appearing on behalf of the respondent would contend that in an earlier round of proceedings, only acceding to the right of the first respondent/ plaintiff and her husband the applicant and other respondents had agreed to recognize their right by unequivocally expressing that they were entitled to 50% of share in the Schedule-A property. He would vehemently contend that having acknowledged



the ownership of the plaintiff in at least two suits namely C.S.No.912 of 2010 & C.S.No.270 of 2013, which had also attained finality, the applicant cannot be heard to say that no title had been transferred in favour of the plaintiff for her to file the present suit.

12. The learned Senior Counsel would further submit that the plaintiff and her husband had been complying with the terms of the compromise decree made in C.S.No.912 of 2010. It is only the defendants who had come to this Court with untenable allegations seeking for various declaratory relief. He would submit that the defendants have filed the suit vexatiously to grab the property in which the plaintiff and her husband had held 50% of the shares. He would further submit that the defendants having conceded to the title of the plaintiffs are now estopped from claiming that the plaintiff do not have title to the property. He would contend that the defendants are constantly approbating and reprobating their claim in respect of the execution of the compromise decrees. He would further submit that the present suit is neither hit by principles of *res judicata* or Order II Rule 2 CPC. He would contend that the earlier suit filed by him was when the defendants had been interfering with the rights of the plaintiff as delineated in C.S.No.270 of 2013. The present suit had



been filed when the defendants have questioned the right of the plaintiff in the suit schedule properties. Hence, therefore, the suit is not hit by the provisions of Order II Rule 2 CPC.

13. He would further submit that the compromise decrees do not require any registration as contended. He would submit that the first MoU and the second MoU upon which the compromise decrees were passed by this Court were all only based upon the pre-existing right in favour of the plaintiff and her husband and its recognition by the defendants. He would submit that the judgments relied upon by the learned counsel for the applicant would itself show that what requires for registration is only a document which creates a new title in the person and a document which do not recognize the right of a persons pre-existing right.

14. That apart, he would submit that pursuant to the first agreement a partnership came into being between the plaintiff, her husband and their family trust on one side and the defendants herein on the other side. The property become the property of the partnership firm and in the second suit which also entered into compromise, the said partnership firm was also a party and therefore, the division of the property of the partnership could only be treated



as moveable property. In that context, he had relied upon the judgments of the

Hon'ble Apex Court in the case of ***Addanki Narayanappa and Another Vs Bhaskara Krishtappa and 13 others*** reported in ***AIR 1966 SC 1300***. Further, relying upon the judgment of the Hon'ble Apex Court in the case of ***R.Hemalatha Vs Kashthuri*** reported in ***2023 (10) SCC 725***, the learned Senior Counsel would contend that even an unregistered document affecting the immovable property requires registration may also be received as an evidence of contract in a suit for specific performance. According to him, applying the said ratio laid down in the said case, the present suit for partition on the strength of agreements upon which compromise decrees were passed can also be entertained as the present suit is in a nature of suit directing the defendants to perform their obligation under the earlier compromise decree.

15. Relying upon the judgments of the Hon'ble Apex Court in the case of ***Popat and Kotecha Property Vs State Bank of India Staff Association*** and ***Chhotanben and another Vs Kiritbhai Jal Krushnabhai Thakkar and others*** reported in ***2005 (7) SCC 510*** and ***2018 (6) SCC 422***, the learned Senior Counsel would contend that the present application under Order VII Rule 11 is *ex-facie* not maintainable and therefore, at the outset would have to be rejected.



He would submit that the grounds raised by the applicants all would have to be decided at the end of the trial and therefore, he prays this Court to dismiss the present application.

16. I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record before this Court.

17. The suit schedule property in Schedule-A had been the center of litigation between the parties in various proceedings. The plaintiff along with her husband and their family trust had earlier approached this court in C.S.No.912 of 2010 seeking for various reliefs against the original owner of the schedule-A property and as also the defendants herein. The said suit came to be decreed by taking on record the compromise that had been entered between the parties therein. As per the terms of the compromise, the plaintiffs in the said suit were held to be entitled to 50% of the share in the Schedule-A property. As regards to the superstructure standing in the Schedule-A property it was recorded that the defendants herein were entitled to 50% of share. The respective parties have also agreed to create a partnership firm for sharing of the profits and losses that arises in the building constructed in the Schedule-A



18. A further suit had been filed before this Court by the defendants herein against the plaintiff, her husband, their family trust and the original owner of the property seeking for various declarations including the declaration of the title to the Schedule-A property. An agreement was struck between the parties and the Joint Compromise was also entered into novating the earlier compromise which led to a judgment and decree in C.S.No.912 of 2010. According, to the new understanding that has been arrived at between the parties, the parties have agreed to have the undivided share of 50% in the Schedule-A property. As regard the construction put up, they were demarcated as Schedule-B and Schedule-C properties denoting them as area A and Area B in the said Joint Memo. The defendants herein were entitled to the portions earmarked as Area A and the plaintiff along with her husband were entitled for the area earmarked as Area B. This Court while disposing of the suit in a judgment dated 29.04.2016 had specifically recorded that physical possession of Area A and Area B had been taken over by the respective parties and had also recorded delivery of possession. It is to be noted that Area B of the said Joint Memo of Compromise is shown as Schedule-C to the present suit. The Schedule-B to the present suit is Area A. Schedule-A to the suit had been



shared equally between the plaintiff herein and her husband on one hand and the defendants on the other hand.

19. The possession of their respective shares has also been admitted to by the plaintiff and her husband in the averments made in a subsequent suit in C.S.No.377 of 2016. The prayer in the present suit is as follows:-

- a) Permanent injunction restraining the defendants herein from in any manner demolishing or altering or modifying any portion of the superstructure and/or common amenities /facilities in the building put up in the land, which is morefully described in the schedule-A herein in violation of the rights of the plaintiffs under the terms of the Decree dated 29.04.2016 passed in C.S.No.270 of 2013;*
- b) Mandatory injunction directing the defendants to restore the drainage pipe connections in the Western portion of the first floor of Schedule-A mentioned property, which is morefully described in Schedule-C herein, so as not to obstruct drainage from the superstructures in the second, third and fourth floor of Schedule- A mentioned property (which is morefully described in Schedule-B herein) and also to remove the partition wall put up by the defendants in the common passage in first floor of Schedule-C mentioned property and all such other constructions put up by them in violation of the terms of the Compromise Decree dated 28.04.2016 passed in C.S.No.270 of 2013, at the cost of the defendants;*
- c) Permanent injunction directing the defendants from further*



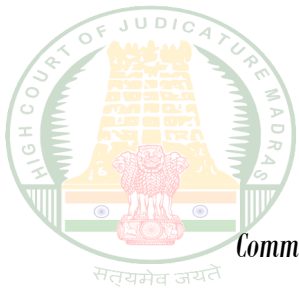
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disconnecting the drainage connections in the Western portion of the first floor of Schedule-A mentioned property, which is morefully described in Schedule-C herein, so as not to obstruct drainage from the superstructures in the second, third and fourth floor of Schedule-A mentioned property (which is morefully described in Schedule-B herein) to the drainage outlet in Schedule-A mentioned property;

d) Permanent injunction restraining the defendants, their men employees, agents or any other person(s) acting and/or claiming under the defendants from in any manner interfering with the plaintiff's peaceful possession and enjoyment, by cause any hindrance to the plaintiffs' use and enjoyment of the common passage and common amenities, including water and drainage facilities in Schedule-A mentioned property..."

20. This Court in C.S.No.270 of 2013 has recorded that the parties had already taken possession of the respective shares namely the Schedule-B and Schedule-C properties to this suit. For better appreciation, the relevant portion of the judgment and decree made in C.S.No.270 of 2013 dated 29.04.2016 is extracted hereunder:-

"...4. Since the parties wanted the Advocate Commissioner to hand over physical possession of the respective portions, I have appointed the very same Advocate Commissioner who inspected the property earlier, to give possession to the concerned parties. Accordingly, the Advocate



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Commissioner handed over possession of the respective portion to the parties as per compromise deed at 9.00 a.m. today. The parties have given acknowledgment after taking possession.

5. The plaintiffs have taken possession of the property marked as "A". The defendants 2 and 3 took possession of the property marked as "B". The delivery of possession is hereby recorded.

6. Since the Advocate Commissioner has already handed over physical possession of the respective portion to the respective parties, each party would enjoy the portion earmarked to them henceforth without any kind of interference from others.

7. The tenanted portion is allotted to the plaintiffs. The defendants 2 and 3, in paragraph 22 of the joint memorandum of compromise have given an undertaking, that they would return the advance amount to the respective tenants, by 31 July, 2016. The plaintiffs are permitted to call upon the tenants to attorn the tenancy and pay the rent effective 01.08.2016, on account of allotment of "A" portion to them as per the memorandum of compromise.

8. The suit is decreed in terms of the joint memorandum of compromise. The sketch and the joint memorandum of compromise shall form part of the decree. Consequently, connected applications are closed..."

21. The prayer in the present suit is even though is to partition Schedule-A property by metes and bounds, the consequential prayer to allot the Schedule-C to the plaintiff and Schedule-B to the defendants cannot stand. The reason for such a conclusion is that this Court had already in C.S.No.270 of 2013 had recorded that the parties had been put in possession of the respective portion that had been agreed between the parties, which is now comprised in Schedule-B and Schedule-C in the present suit. Therefore, the prayer in the present suit



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would squarely hit by Rules of *res judicata* as the said issue has already been decided between the parties, this Court would have understood that if there was a relief of declaration that such compromise decree was null and void for the reasons to be made therein. The present relief if made as a consequential relief of such declaration, the suit may not have been hit by principles of *res judicata*. It may be true that the principles of *res judicata* is a mixed question of law and fact but when the facts itself stare large, leading this Court to come to a conclusion that the same is hit by principles of *res judicata*, this Court cannot perpetuate the hardship against a person in defending a litigation which had already been put to rest. The present suit at most can only to viewed as an abuse of process of the Court. The Hon'ble Apex Court had repeatedly held that the Courts should be cognizant of a fact that the Courts should not be flooded with unnecessary litigation and such litigation should be nipped at the bud.

22. In view of the aforesaid reasoning and findings, this Court does not find any reason to venture upon the other arguments made by the learned counsels appearing on either side including the judgments relied upon by them, as this Court had found that the present suit is nothing but a re-litigation of an earlier dispute between the parties holds the present suit as an abuse of process of Court.



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23. In fine, the application stands allowed and the the plaint shall be struck off from the suit Register. However, there shall be no order as to costs.

23.06.2025

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Index: Yes/No

Internet: Yes/No



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K.KUMARESH BABU., J

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Pre-Delivery Order in
A.No.827 of 2025
in C.S.No.139 of 2024

23.06.2025