

(2010) 08 MAD CK 0051
In the Madras High Court
Case No : S.A. No. 822 of 1999

Sarojini, Manickkam and Suseela

APPELLANT

Vs

Nanjammal and Others

RESPONDENT

Date of Decision : 04-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3

Citation : (2010) 08 MAD CK 0051

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : S. Mukunth, for Sarvabhauman Associates, for the Appellant; V. Nicholas, for the Respondent

Judgement

M. Jaichandren, J.—The Second Appeal has been filed against the judgment and decree, dated 7.10.1998, made in A.S. No. 139 of 1996,

on the file of the Principal District Court, Coimbatore, confirming the judgment and decree, dated 28.2.1996, made in O.S. No. 519 of 1986, on

the file of the Principal Subordinate Court, Coimbatore.

2. When the second appeal was taken up for hearing, a memo of compromise, dated 27.7.2009, signed, both by the parties and the counsels

appearing on their behalf, has been filed before this Court requesting that the second appeal may be disposed of and a decree may be passed in

the second appeal, in terms of the said memo of compromise.

3. The memo of compromise, dated 27.7.2009, reads as follows:

Joint Memo of Compromise between the appellants 2 and 3 and the respondents 1 to 5 under Order 23 Rule 3 C.P.C.

1. The appellants 2 and 3 and the respondents 1 to 5 pray that a decree may be passed in the following terms.

2. It is submitted that the appellants filed the suit against the respondents herein for partition and separate possession of 3/4th share in the suit

properties consisting of 3 items in schedule part I and on item in schedule part II in O.S. No. 519 of 1986 on the file of the Principal Subordinate

Judge, Coimbatore. A decree was granted in favour of the appellants for partition and separate possession of the 3/4th share in the suit property.

3. It is submitted that the respondents herein filed an appeal against the said decree of the trial Court in A.S. No. 139 of 1996 before the Principal

District Judge of Coimbatore. By the Judgment and decree dated 7.10.1998 the appeal was allowed and the suit filed by the appellants for

partition in O.S. No. 519 of 1986 was dismissed.

4. It is submitted that against the judgment and decree of the Principal District Judge of Coimbatore dated 7.10.1998 in A.S. No. 139 of 1996,

the appellants have filed the above second appeal. Pending the second appeal the first appellant Sarojini died on 4.6.2004 leaving behind her, the

appellants 2 and 3 namely son and daughter as her legal representatives. Since the appellants 2 and 3 who are the legal representatives of the

deceased first appellant are already on record as the appellants 2 and 3, a memo to record them as the L.Rs of the deceased first appellant has

been filed.

5. It is submitted that in order to settle all the disputes between them which are pending for a very long time and with a view to purchase peace and

to solve all the disputes between them, the appellants 2 and 3 and the respondents 1 to 5 have entered into a compromise and that they pray that a

preliminary and a final decree may be passed in the above second appeal in the following terms.

a. The appellants 2 and 3 and the respondents 1 to 5 agrees that the schedule part II. Property was already sold by the deceased Nanjappa

Chettiar who is the husband of the first appellant and the first respondent and father of the appellants 2 and 3 and respondents 2 to 5. Hence the

appellants 2 and 3 and respondents 1 to 5 are not asking any share in the said schedule part II of the property mentioned in the plaint.

b. Item Nos.1 and 3 in schedule - part I shall be allotted to all the respondents 1 to 5. c. Item No. 2 in schedule - part I is 65 cents out of 6.87

acres in G.S. No. 177/1B, Karamadai Village, Mettupalayam Taluk, Coimbatore

District. In this a 26 feet road runs dividing the said item No. 2 into two namely Eastern part and Western part.

The Eastern part of the property in item 2 in schedule - part I i.e., on the eastern side of the 26 feet road shall be allotted to all the respondents 1 to 5.

d. In the western part of item 2 of schedule - part I of the suit property on the southern side measuring 5446 sq.ft. (12 cents 214 sq.ft) and

western side of 26 feet i.e., Red marked "A" portion shall be allotted to all the respondents 1 to 5.

e. In the western part of item 2 of schedule - part I of the suit property on the northern side measuring 8785 sq.ft (20 cents 0.65 sq.ft) and western

side of 26 feet road, i.e., Yellow marked "B" portion shall be allotted to the appellants 2 and 3.

f. The 26 feet road in between the western and eastern part of Item 2 of schedule -part I of the suit property shall be common to the appellants 2

and 2 and respondents 1 to 5.

g. The rough sketch showing the western part of item 2 of schedule part I of the suit property and enclosed along with this memo of compromise shall be treated as part of this decree.

h. The appellants 2 and 3 and the respondents 1 to 5 shall bear their respective cost throughout.

Suit properties

Schedule - Part I item:

In Nilgiris Registration District, Mettupalayam Taluk, Chikkadasampalayam Village, Mettupalayam Town, Rangala Naidu Street, Natham No.

315, South of Naniah Gowder's Buildings, North and West of Marudachalam Asari's house, North of East west road and Rangappa Naicker's

house and Pannappan and Idumban.

In this East to West 46 feet, North to South 53 feet, A.0.05 cents and 120 sq.ft. house site with 6 anganams. 3 houses west facing sough 6

anganams, houses, with shutters and vacant space with appurtenances and right of way along the East West space south of Nanjappa Gowder's

buildings D. Nos. 7/192, 193, 194, 195, 196, 197, 198, 199 and 200.

Schedule - Part I item No. 2

In Nilgiris Registration District, Mettupalayam Sub Registration District and Taluk, Karamadai Village in G.S. No. 177/1B a total extent of punjai

6.87 in the south of A. Rangaswamy's land, East of G.S. No. 177/1A West of G.S. No. 179 and North of A. Vellingiri's lands an extent of

Ac.0.65 with appurtenances and with right to user along the mamool cart track. Schedule-Part I item 3

The house properties situated in 54 and 55 Sundaram Street, Coimbatore.

Schedule-Part II

In Nilgiris Registration District, Mettupalayam Sub Registration District and Taluk, Sikkadasampalayam Village, Mettupalayam Town, East of

North South land in Rangai Naidu Street, West of Municipal Lavatory, South of Rama Boyan's house, North of Sethuraman Gowder's private

land along his lands and fencing in the East West 40 cubits, North South 20 cubits. With a 5 anganam titled house an Ajaram, two rooms

Verandha and appurtenances, Municipal Door No. 163 to 167 (old) New Nos.13/151 to 155.

Description of properties allotted to the respective parties

Properties allotted to all the respondents 1 to 5

1. Suit schedule - part I item 1

In Nilgiris Registration District, Mettupalayam taluk, Chikkadasampalayam village, Mettupalayam Town, Rangala Naidu Street, Natham No. 315,

South of Naniah Gowder's Buildings, North and West of Marudachalam Asari's house, North of East West Road and Rangappa Naicker's

house and East of the Houses of Pannappan and Idumban.

In this East to West 46 feet, North to South 53 feet A 0.05 and 120 sq.ft. house site and 6 anganams. 3 houses west facing south facing 6

anganam houses with shutters and vacant space with appurtenances and right of way along the East West space, South of Nanjappa Gowder's

buildings D.Nos.7/192,193,194,195,196,197,198,99 and 200.

2. Suit schedule - Part I item 3

The house properties situated in 54 and 55 Sundaram Street, Coimbatore

3. Suit schedule - part I item 2

In this the eastern part of the property in suit schedule - part I item 2 in S.F. No. 177/1B, Karamadai Village, Mettupalayam Taluk.

4. Suit schedule - part I item 2

In the western part of the property in suit schedule - part I item 2 on the southern side measuring 5446 sq.ft. (12 cents 214 sq.ft.) and on the western side of the 26 feet road - Red marked A portion in the plan attached hereto.

East to West on Northern side.... 136 feet 2 ½ inches

East to West on Southern side.... 139 feet 6 inches

North to South on the western side. 39 feet 6 inches

North to South on the Eastern side. 39 feet 6 inches

Property allotted to appellants 2 and 3

suit schedule - part I item 2

In the western part of item 2 of suit schedule - part 1 on the Northern side measuring 8785 sq.ft. (20 cents 065 sq.ft.) and on the western side of 26 feet road - Yellow marked B portion in the plan attach hereto.

East to West on Northern side.... 130 feet

East to West on Southern side.... 136 feet 2 ½ inches

North to South on the western side. 66 feet

North to South on the Eastern side. 66 feet

Common to both appellants 2 and 3 and respondents 1 to 5

26 feet road in between the Eastern and Western part in G.S. No. 177/1B Karamadai Village, Mettupalayam Taluk, Coimbatore District in item 2 of suit schedule - part I.

4. Recording the above memo of compromise, dated 27.7.2009, the Second Appeal is disposed of on the above terms. The above said memo of compromise shall form part of the decree. No costs. Consequently, connected M.P. No. 8382 of 1999 and C.M.P. No. 846 of 2010 are closed.