

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 6925 OF 1999

N.M.CHENNIAPPA GOUNDER & ANR.  
Appellant (s)

App

VERSUS

K.P.MUTHUSAMY (DEAD) BY LRS.  
Respondent(s)

(With appl(s) for taking on record the memo of compromise with office report)

Date: 04/08/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN  
HON'BLE MR. JUSTICE S.B. SINHA

For Appellant(s) Mr. K.V.Viswanathan, Adv.  
Mr. B.Ragunath, Adv.  
Mr. K.V.Venkataraman, Adv.

For Respondent(s) Mr. M.A. Chinnasamy, Adv.

Mr. R.Nedumaran, Adv.  
UPON hearing counsel the Court made the following  
O R D E R

I.A. for taking on record the memo of compromise is allowed.

Appeal is disposed of in terms of the compromise arrived at between  
the parties. There shall be no order as to costs.

(Parveen Kr. Chawla)  
Court Master

(Kanwal Singh)  
Court Master

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[Signed Order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6925 OF 1999

N.M. Chenniappa Gounder & Anr.

Appellant (s)

Versus

K.P. Muthusamy (Dead) By L.Rs.

Respondent (s)

O R D E R

Late Sri K.P.Muthusamy, predecessor-in-interest of the  
contesting respondents Nos. 8 to 10 herein i.e. (i) Sarasu w/o late  
K.P.Muthusamy (ii) K.M.Palanisamy s/o late K.P.Muthusamy (shown in  
as Murugan) and (iii) Mythali d/o late K.P.Muthusamy, filed O.S.  
No.203 of 1982 in the Court of Subordinate Judge, Gobichettipalayam  
against respondent Nos.2 to 7 and the appellants herein and prayed for  
partition of the suit property into two shares and to allot one share to  
him and the other to his brother Elayakumar, respondent No.2 herein.

Trial Court vide its judgment dated 21st day of March, 1984  
dismissed the suit with costs. District Judge allowed the appeal AS  
No.97/84 by his judgment dated 21st December, 1984 and decreed the  
suit for partition granting half share to late Sri K.P.Muthusamy and also  
ordered for recovery of Rs.8,000/- as mesne profits from defendants 2 to  
8. Appellants-defendants filed Second Appeal No. 327 of 1985 against  
the judgment and decree of the first appellate Court in AS No.97/84 and  
cross objections were also filed by late K.P.Muthusamy and respondent  
Nos. 8 to 10 herein. Respondent No.2 i.e. Elayakumar filed transfer  
petition to transfer AS No.11 of 1985 pending before the District Judge,

Erode to the High Court and to be heard along with Second Appeal No.

327 of 1985. The said transfer petition was allowed and AS No.11 of

1985 was renumbered as Tr.AS No.922/1988 and was heard along with

Second Appeal No. 327 of 1985.

Learned Single Judge of the High Court by his impugned

judgment dismissed the Second Appeal filed by the appellants as well as

cross objections filed by late K.P.Muthusamy and respondent Nos. 8 to

10 herein but allowed the Tr.AS No.922 of 1988 filed by the respondent

No.2 herein i.e. Elayakumar and the decree in O.S. No.203 of 1982 was

set aside. Against the dismissal of Second Appeal No.327 of 1985,

appellants have filed the present appeal by grant of special leave in this

Court. Appellants have also filed LPA No.99 of 1998 in the High Court

of Madras against the decree in Tr.AS No.922 of 1988. During the

pendency of Civil Appeal No.6925 of 1999, appellants filed Transfer

Petition No.993 of 2002 seeking transfer of LPA No.99 of 1998 to this

Court and to be heard along with the present appeal. This Court on 25th

August, 2003 while disposing of the Transfer Petition deferred the

hearing of LPA No.99 of 1998 till this appeal is heard and disposed of.

Appellants and respondents Nos.2 & 8 to 10 have settled the

dispute mutually with regard to the suit schedule properties and have

filed a memo of settlement signed by all the parties duly supported by

individual affidavits and also filed I.A. No.4 of 2005 for taking on record

the said memo of compromise and disposing of the appeal in terms of

the memo of compromise. The said I.A. is allowed and the memo of

compromise is taken on record. The expression "Parties in the First Part" as referred to in the compromise are the appellants i.e. N.M.Chenniappa and Pichu Ammal which expression shall include their legal representatives and assigns and successors and the expression "Parties in the Second Part" shall mean and include Elayakumar @ Elaya Gounder, Sarasu, Maithili and K.M.Palanisamy, their legal representatives, successors and assigns. The terms of the compromise are as under:

(a) The Party of the First Part and the parties at the Second Part have compromised and amicably settled their disputes including the one pending in Civil Appeal No. 6925 of 1999 in the Hon'ble Supreme Court and in L.P.A. No. 99 of 1988 pending in the High Court by recognizing the fact that the party of the First Part have a pre-existing right and was always entitled to 4 acres 22 cents out of 6 acres 37 cents, in Survey No.92, Kukalur Village, Gobichettipalayam Taluk, Tamil Nadu. For sake of convenience the portion is marked in colour Red in the enclosed sketch, which is to be treated as part of the compromise memo;

(b) The Party of the First Part /appellants and the party of the second part / respondents no. 1,7,8, 9 [(a) Elayakumar @ Elaya Gounder (b) Sarasu @ Maithili and (d) K.M. Palanisamy] recognize the pre-existing right and entitlement of the parties of the Second Part respondent No. 1, 7, 8, 9 to the extent of 2 acres 15 cents out of 6 acres 37 cents in Survey No:92, Kukalur Village, Gobichettipalayam Taluk, Tamil Nadu State, adjoining east of S.F. 93. For the sake of convenience the portion is marked in colour yellow in the enclosed sketch.

© The Party of the First Part / appellants and the party of the Second Part / respondents No. 1, 7, 8, 9 recognize the pre-existing right and entitlement of the parties in the Second Part namely (a) Elaya Kumar @ Elaya Gounder (b) Sarasu w/o. Late K.P. Muthusamy @ Maithili d/o. Late K.P. Muthusamy and (d) K.M. Palanisamy S/o. Late K.P. Muthusamy (Murugan in the present appeal) to 2 acres 48 cents situated in Survey No. 313 C and 319 of Mewani Village, Gobichettipalayam

Taluk, Tamil Nadu.

(d) The parties of the First Part / appellants and the parties of the Second Part / respondents No. 1, 7, 8, 9 are already in possession of their respective shares and they agreed to give up any right to mesne profit of past and future with regard to the said land.

(e) Parties of the First Part / appellants and the parties of the Second Part / respondents No. 1, 7, 8, 9 agreed that L.P.A. No.99 of 1998 on the file of the High Court of Madras would also be disposed off in accordance with this compromise.

(f) Parties of the First Part /appellants and the parties of the Second Part / respondents No. 1, 7, 8, 9 states that the compromise is entered into, out of their free will and volition and without any coercion, duress or undue influence."

Appeals are disposed of in terms of the compromise arrived at

between the parties. There shall be no order as to costs.

.J.

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(ASHOK BHAN)

New Delhi;  
..J.  
August 04, 2005.

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(S.B. SINHA)