

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.6432 OF 2003

JOHN THOMAS & ORS.  
Appellant(s)

App

VERSUS

JOSEPH THOMAS(D) TH. LRS. & ORS.

Respondent(s)

(With application for substitution for bringing on record Lrs. of deceased respondent No.1 and for c/delay in filing substitution application.

Date: 02/02/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE A.K.MATHUR

For Appellant(s)

Mr. P.Krishnamoorthy, Sr. Adv.

Mr. M.T.George, Adv.

For Respondent(s)

Mr. T.G.Narayanan Nair, Adv.

Mr. Maninder Singh, Adv.

UPON hearing the Court made the following

O R D E R

Delay in filing the Substitution application is condoned. The Substitution application is allowed.

The Appeal is disposed of in terms of the signed order.

(Parveen Kr. Chawla)

Court Master

(Kanwal Singh)

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6432 OF 2003

JOHN THOMAS & ORS.

..APPELLANTS

VERSUS

JOSEPH THOMAS (D) TH. LRS. & OTHERS

..RESPONDENTS

O R D E R

Aggrieved against the judgment of the High Court of Kerala at Ernakulam in

A.S. No.82 of 1992 dated 4th July, 2000, the defendants-appellants herein have

come up in appeal.

Original plaintiff-respondent No.1 and original defendant-appellant knew each other. Both of them had died and are now represented through their legal representatives. On 27.4.1982, the original plaintiff and defendant herein entered into an agreement for mutually exchange of their properties fully described in the Schedule 'A' & 'B', attached to the Memorandum of Compromise Petition dated 10th January, 2005 filed in this Court. Original plaintiff had transferred the Schedule 'A' property to the original defendant as per agreement whereas the original defendant did not transfer the Schedule 'B' property in favour of the original plaintiff.

Original plaintiff-respondent No.1 filed O.S. No.51 of 1987 seeking specific performance of the agreement dated 27.4.1982. Trial court decreed the suit. Aggrieved against which appellants-defendants filed A.S. No. 82 of 1992 in the High Court of Kerala at Ernakulam. The Division Bench of the High Court dismissed the appeal and affirmed the judgment and decree passed by the trial court. Original plaintiff had also filed an Execution Petition before the Subordinate Judges Court, Kottayam which is still pending.

Aggrieved against the judgment and decree passed by the High Court, the present appeal by grant of special leave has been filed.

During the pendency of the appeal, the parties have amicably settled the

dispute out side the court. They have filed a Memorandum of Compromise Petition

dated 10.1.2005 and pray that the said compromise be taken on record and the

appeal disposed of in terms of the compromise and the said terms be made a part of

this order. The terms of the compromise read as under:

"That since the understanding between the original plaintiff and defendant at the commencement of the sale transaction in the year 1982 was to exchange the properties hereunder described as A and B schedule properties and already 4 sale deeds were executed in favour of the 1st and 2nd appellants as well as the 2nd respondent herein numbered as sale deeds 1554/1982, 1555/1982, 1556/1982 and 1995/2000 respectively of the Poonjar SRO pertaining to the A schedule property the Additional respondents herein, the legal heirs of the deceased 1st respondent hereby accept the absolute right title and interest of the respective parties over the A schedule property.

2. That in consideration of the said exchange of 'A' schedule property herein the appellants and respondents herein agreed to transfer 30 cents out of the B schedule property to the legal heirs of the plaintiff in O.S.51/87 or their nominees which is more particularly described in the C schedule hereunder.

3. The remaining area having an extent of 60 cents in the 'B' schedule property which is more particularly described as 'D' schedule shall absolutely belong to the legal heirs of the deceased 1st defendant in O.S.51/87 and the legal heirs of the deceased plaintiff will not

claim any right, lien whatsoever over the said property.

Anyhow the parties will have the right to enjoy the common pathway along the eastern side of the B and C schedule properties.

4. The appellants and respondents herein viz. the legal heirs of the deceased plaintiff and defendant in O.S.51/87 agree to have separate possession and enjoyment of the 'C' and 'D' schedule properties hereinafter respectively and the parties agree that the sale of the 'C' schedule property herein is only a completion of the exchange contemplated by the two deceased persons viz. Joseph Thomas and Mathew Thomas the plaintiff and the 1st defendant respectively in O.S.51/87 before the Sub Court Kottayam.

5. That to bring about the proper, speedy and effective enforcement of this compromise petition both the plaintiff side and defendants side have decided to give power of attorney of the respective legal heirs to one of their nominees and accordingly from the plaintiff's side a joint Power of attorney is given to Mr. Lal Joseph s/o Joseph Thomas, Vadakkal House, Koovappally Village, Chenappady Kara, Kajirappally Taluk, Kottayam District the eldest son of the deceased 1st respondent herein. Similarly from the defendants side a Power of Attorney is given to Sri M.D. Baby, aged 55, S/o V.V. Devasia M 26(A) 29 Indira Nagar, Kallepully P.O., Palakkad Taluk, Palakkad District the eldest son in law of the deceased 1st defendant in O.S.51/87.

6. Both sides hereby undertake not to revoke the Power of Attorneys executed in favour of the above persons. The respective title holders of the said two properties will be bound by the joint decisions taken by the said power of attorney holders till the registration of the

transfer deeds as per this compromise petition.

7. Both sides hereby agree to execute the transfer deed as per Clause 2 above mentioned within a period of 30 days from the date of final order passed by the Hon'ble Supreme Court of India in the above Appeal and the expenses for the same shall be met by the plaintiffs.

8. The parties hereby agree to make a joint application before the Honourable Supreme Court of India through their respective counsels praying that the above Civil Appeal be disposed of in terms of the above memorandum of compromise so that a decree may be passed incorporating the above terms.

9. The parties hereby agree to suffer the respective costs all throughout. The terms of this agreement shall also be construed strictly between the parties hereto and as part of this compromise."

Accordingly, the said compromise is taken on record and the appeal is disposed of in terms of the compromise, referred to above. The terms be read as a part of this order. The judgment and decree passed by the courts below are modified in terms of the compromise arrived at between the parties. No order as to costs.

....J.

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[Ashok Bhan]

New Delhi;  
.....J.

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February 02, 2005.

[A.K. Mathur]