

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Appeal No.539 of 2011 and M.P.Nos.1 and 2 of 2013
and
Cross Objection No.122 of 2014

1. Rukmani (Since deceased)
2. Gayathri
3. K.Sreenivasamoorthy
4. Subathra Upendra
5. Kowsalya Govindarajan ... Appellants/Plaintiffs/Respondents 1 to 5

-Vs-

1. K.S.D.Siva Prasad
2. Jaya Vaidyanathan ... Respondents/Defendant/Cross Objector/6th
Plaintiff/6th Respondent

Appeal filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 24.8.2011 passed in O.S.No.12614 of 2010 by the learned Additional District and Sessions Judge, Fast Track Court No.V, City Civil Court, Chennai.

For Appellants : Mr.P.Subba Reddy

For 1st Respondent : Mr.V.R.Shanmuganathan

For 2nd respondent : Set exparte

Cross Objection No.122 of 2014

K.S.D.Siva Prasad

vs.

... Cross Objector

1. Rukmani
2. Gayathri
3. K.Sreenivasamoorthy
4. Subathra Upendra
5. Kowsalya Govindarajan
6. Jaya Vaidynathan

... Respondents

CROSS OBJECTION filed against the judgment and decree dated 24.8.2011 passed in O.S.No.12614 of 2010 by the learned Additional District Judge, Fast Track Court No.V, City Civil Court, Chennai.

For Cross Objector:		Mr.V.R.Shanmuganathan
For Respondents 1 to 5	:	Mr.P.Subba Reddy
For 6 th respondent	:	Set exparte

C O M M O N J U D G M E N T

The appellants are the plaintiffs 1 to 5 in O.S.No.12614 of 2010 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.V, City Civil Court, Chennai. The 1st respondent is the defendant and the 2nd respondent is the 6th plaintiff in the suit. The said suit was originally filed before this Court in C.S.No.936 of 2006. On the arrangement of pecuniary jurisdiction, the suit was remanded back to the learned Additional District and Sessions Judge, Fast Track Court No.V, City Civil Court, Chennai and renumbered as O.S.No.12614 of 2010. The 1st appellant Rukmani died during the pendency of the suit itself. The said suit was filed for declaration that the Memorandum of Understanding dated 20.06.2002 reached between the plaintiffs and the defendant shall stand substituted in the place of the decree and judgment dated 25.09.2011 in C.S.No.1008 of 1998 and for permanent injunction to restrain the defendant from taking any action in pursuance of the decree and judgment dated 25.09.2001 in C.S.No.1000/98. The suit was dismissed by decree and judgment dated 24.08.2011 by the trial court. Challenging the same, the appellants are before this Court with this Appeal.

2. I have heard the learned Counsel for the appellants and the learned Counsel for the 1st respondent. There is no representation for the 2nd respondent. The 2nd respondent is set ex-parte.

3. The case of the plaintiffs is as follows:

The defendant filed a suit against the plaintiffs in C.S.No.1000/98 on the file of this Court for recovery of a sum of Rs.43,21,382.45 paise. The said suit was decreed for a sum of Rs.26,28,389.55 by decree and judgment dated 25.09.2001. No appeal was filed against the said decree and thus the same has become final.

4. According to the plaintiffs, while so, subsequent to the above said decree of this Court in C.S.No.1000/1998, a compromise was reached between the parties on 20.06.2002 under which it was agreed that the plaintiffs shall pay Rs.17,32,500/- in full quit of all claims under the above said decree. A Memorandum of Understanding was also executed by the parties (Ex.A.6). It is further stated that subsequent to the said understanding and in pursuance of the same, the plaintiffs paid a sum of Rs.13,42,020/- on various dates under 9 Demand Drafts and by one time cash payment. The balance amount as per the said Memorandum of Understanding was Rs.3,90,480/-. It is also stated that as against one of the plaintiffs, the defendant

filed two criminal cases under Section 138 of the Negotiable Instruments Act in which a sum of Rs.2,35,000/- was paid by way of compensation. According to the plaintiffs that amount should also be adjusted as against the amount arrived at in the above stated Memorandum of Understanding. It is also stated that subsequently, in the month of April, 2006 by way of two pay orders, the plaintiffs attempted to pay Rs.3,00,000/-, but the defendant refused. According to the plaintiffs, now the defendant is ignoring the memorandum of understanding and ignoring the payments made. He is trying to take further action based on the decree in C.S.No.1000/1998. It is the further case of the plaintiffs that the defendant has got no legal right to proceed against the plaintiffs based on the above said decree in C.S.No.1000/1998, since according to them, the Memorandum of Understanding shall substitute the decree in C.S.No.1000/1998. With these pleadings, the plaintiffs have filed the above said suit.

5. The defendant vehemently contested the suit. According to the defendant, it is true that such a decree was passed in C.S.No.1000/1998 for a sum of Rs.40,43,039.21 including the principal amount of Rs.26,28,389.55. It is also true that there was a memorandum of understanding reached between the parties. But, according to the defendant, the payments stated to have been made as mentioned in the plaint were not made against the decree in pursuance of the memorandum of understanding. These payments were made in respect of different transactions. He would further submit that the memorandum of understanding was also terminated under Ex.A8 and Ex.B.4. Therefore, the question of substituting the Memorandum of Understanding does not arise as the same is not legally permissible.

6. Having considered the above pleadings, the trial court framed appropriate issues. On the side of the plaintiffs, the plaintiff was examined as P.W.1 and as many as 20 documents have been exhibited and on the side of the defendant one witness was examined as D.W.1 and as many as 5 documents were exhibited. Having considered all the above, the trial court dismissed the suit by decree and judgment dated 24.08.2011. That is how, the appellants are before this Court with this appeal.

7. In the said judgment, the trial court has given a finding that the memorandum of understanding dated 20.06.2002 is revoked and the status quo ante has been restored is not a valid one. The trial court has further held that the second Memorandum of Understanding under Ex.B.1 is only a partial discharge of the earlier memorandum of understanding which superceded the decree passed in C.S.No.1000/1998. As against these findings, the respondent has filed Cross Objection No.122/2014. That is how the appeal as well as the cross objection are before me for disposal.

8. I have heard the learned Counsel on either side and I have also perused the records carefully.

9. It is an undisputed fact that a decree was passed in C.S.No.1000/1998 for a sum of Rs.43,71,949.55. It is also an undisputed fact that there was a memorandum of understanding dated 20.06.2002 reached between the parties by which some understanding was arrived at in respect of the payment of the decree amount. According to the said understanding, the plaintiffs agreed to pay a sum of Rs.17,32,500/- in full quit of the decretal amount. Until this, there is no controversy between the parties. The controversy has arisen only in respect of the subsequent payments allegedly made by the plaintiffs. In evidence, it is stated by P.W.1 that a sum of Rs.13,42,020/- was paid by means of 9 demand drafts and one time cash payment and the balance is Rs.3,90,480/-. Whether these payments were made as against the decree amount or not is a matter to be gone into only by the Execution Court. For that purpose, no separate suit could be filed.

10. The learned Counsel for the appellants would submit that it is possible under Section 47 of the Code of Civil Procedure.

11. In my considered opinion, a Claim Application under Section 47 of C.P.C. could be filed only in an execution proceeding and that will not confer any right on the claimant to file a separate suit. Section 41 of the Specific Relief Act (hereinafter referred to as, 'the Act') speaks of the situations where a court shall refuse to grant a decree for injunction. Sub-section (a) of Section 41 of the Act states that an injunction cannot be granted to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings.

12. Here in this case, an injunction is sought for to restrain the defendant from initiating any proceeding including an execution proceeding against the plaintiffs. Such injunction cannot be granted. If any execution proceeding is initiated, it is always open for the plaintiffs herein to resist the same by filing counter or by filing a separate claim application, if situation so warrants. When such a remedy is available for the plaintiffs to work out, it is not possible, more particularly, in view of the bar contained in Section 41 of the Act to grant an injunction against the defendant herein from proceeding with the Execution Petition in C.S.No.1000 of 1998. Though it is stated that a sum of Rs.13,42,020/- was paid by the plaintiffs to the defendant as against the decretal amount as per the memorandum of compromise, that cannot be adjusted upon in this suit because that is for the execution court to decide as to whether these payments were made as against the decretal amount or not in pursuance of the compromise memo or such claims were made as against totally a different transaction as it is claimed by the defendant.

13. In my considered opinion, it is not at all possible for this Court to grant a decree to substitute a memorandum of understanding in the place of the decree. As I have already narrated, the remedy for the plaintiffs is to work out only before the execution court. Therefore, the finding that Ex.B.1 is only a partial discharge of the earlier Memorandum of Understanding, which superceded the decree passed in C.S.No.1000/1998 is not sustainable and therefore, the same is liable to be set aside. Thus, Cross Objection No.122 of 2014 needs to be allowed.

14. It is now brought to the notice of this Court that the respondent herein has already filed E.P.No.87 of 20012 in C.S.No.1000/1998 before the learned District Judge, Chengalput to execute the decree. As I have already clarified, it is open for the plaintiffs herein/judgment debtors to file appropriate counter before the execution court to prove the memorandum of understanding or payments made if any and also to establish that they are not liable to pay any amount or the amount claimed in the execution petition is not a correct amount. The defendant is also at liberty to work out his remedy in any other manner in the said execution proceeding itself by filing a claim application, if it is legally permissible.

15. The learned Counsel for the appellants would submit that during the course of his evidence, the defendant herein has admitted that the above said amount of Rs.1342,020/- was received by him only as arrears in pursuance of the memorandum of understanding. In my considered opinion, in this suit, the said question need not be gone into, because, it is again a matter for consideration only by the execution court. Thus, so far as the appeal is concerned, I do not find any substantial question of law warranting admission. I do not find any merit except the fact that the plaintiffs are entitled for clarification which I have made herein above. It is also made clear that any observation made by this Court in this common judgment or finding given by the trial court in the judgment and decree, shall not have any bearing before the execution court.

16. In the result, the appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed. The Cross Objection is allowed.

tsi

-s/d-
Deputy Registrar(J)
Dt:9/3/2015

True Copy

Sub-Assistant Registrar

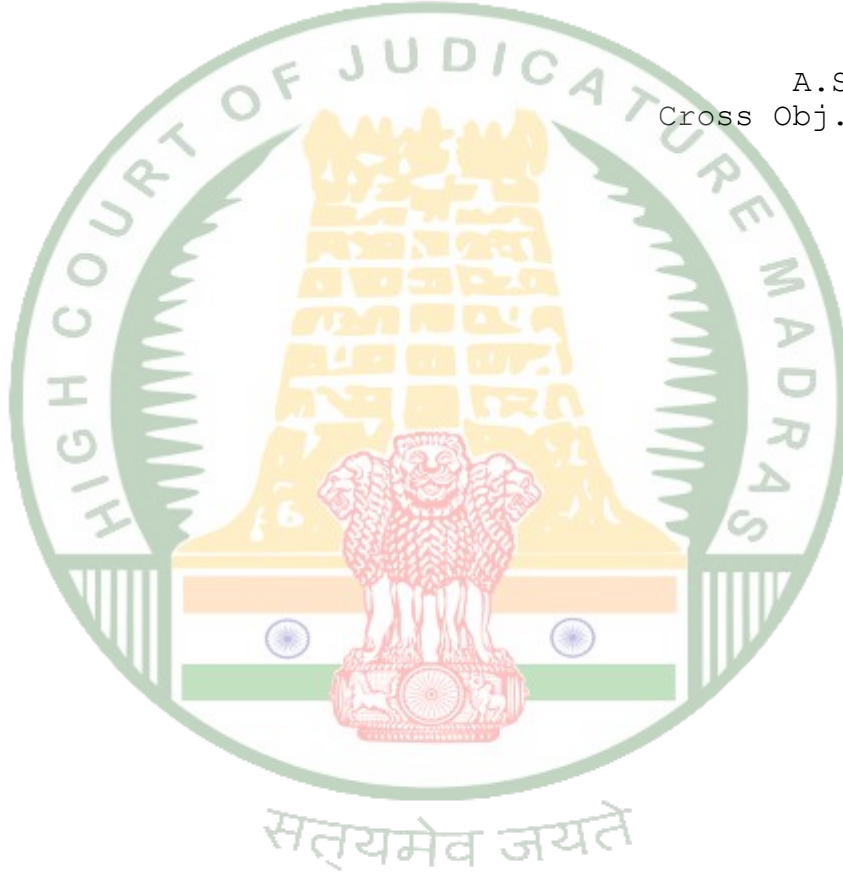
To

1. The Additional District Judge,
Fast Track Court No.V,
City Civil Court, Chennai.
2. The Section Officer,
V.R.Section, High Court,
Madras.

+ 1 cc to Mr.V.R.Shanmuganathan, Advocate SR 7848

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prk12/3

A.S.539 of 2011 and
Cross Obj. No. 122 of 2014



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