

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-09-2015

(Judgment Reserved on 28-08-2015)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Civil Suit No.808 of 2000

1. Mr.A.Gani Mohammed
2. Mrs.G.Salima
3. Mr.Ahmed Kabeer,
 Represented by his Power Agent
 Mr.A.Gani Mohammed (first plaintiff) ... Plaintiffs

Vs.

1. Mr.N.D.Gothandapani
2. Mr.K.Purushothaman
3. Mrs.K.Anusuya
4. Ms.Navaneetham
5. Ms.Abirami
6. Ms.Sridevi ... Defendants

Plaint filed and numbered as Civil Suit under Order 4 Rule 1 of the Madras High Court Original Side Rules, read with Order 7 Rule 1 of the Code of Civil Procedure, praying for judgment and decree:

(a) to direct the defendants 1 to 3 to jointly and severally pay the plaintiffs 1 and 2, a sum of Rs.29,21,966.64 with interest on Rs.18,24,067/- at 24% per annum from the date of plaint till realisation and

(b) to direct the defendants 1 to 3 jointly and severally pay the costs of the suit to the plaintiffs 1 and 2.

For plaintiffs : M/s.A.K.Lakshminarayanan
For defendants : Set ex-parte, vide order dated
22.07.2014

JUDGMENT

It is the case of the plaintiffs that as per three separate sale agreements, dated 17.05.1994, defendants 1 to 3 agreed to sell 1/3 undivided share and rights they had in the suit property in favour of the respective three plaintiffs and as per the said sale agreements, defendants 2 and 3 undertook to get a release deed executed by the first defendant, by releasing his life interest, to get the tenants vacated and deliver vacant possession within six months and to execute the sale deeds along with defendants 4 to 6 in favour of each of the plaintiffs and received Rs.2,00,000/- as advance by agreeing to receive the balance sale consideration at the time of registering the sale deeds for a total sale consideration of Rs.20,00,000/-. Since the defendants did not respond to the legal notice issued on behalf of the plaintiffs, even though the plaintiffs have been ready and willing to pay the balance sale consideration, coupled with the fact that the plaintiffs have paid substantial amount to the defendants 1 to 3, the plaintiffs have filed the present suit for recovery of Rs.29,21,966.64 with interest on

Rs.18,24,067/- at the rate of 24% per annum from the date of plaint till the date of realisation from the defendants 1 to 3.

2. By order dated 22.07.2014, the defendants were set ex-parte by this Court.

3. On being satisfied with the avements in the plaint and on a perusal of the oral and documentary evidence, it is clear that the plaintiffs have proved their case and that as per Exs.P-1 to P-3 sale agreements, dated 17.05.1994, the first plaintiff paid Rs.5,04,489/- on 05.07.1996, the second plaintiff has paid Rs.5,09,489/- on 05.07.1996 and the third plaintiff has paid Rs.5,09,489/- on 05.07.1996, i.e. totally, Rs.15,23,467/- had been paid by them. Subsequently, the first plaintiff paid Rs.1,25,000/- on 27.06.1997 and Rs.5,000/- on 29.08.1997, totalling Rs.1,30,000/-, which is evident from Exs.P-8 and P-9 respectively. Thus, totally, the plaintiffs have paid Rs.16,53,467/- (Rs.15,23,467/- + Rs.1,30,000/-) towards the part of the sale consideration to the defendants. Further, P.W.1 in his proof affidavit, dated 12.08.2014, stated that stamp papers worth Rs.58,500/- each, were engrossed by purchasing the same for total amount of Rs.1,17,000/-.

4. It is stated by the learned counsel for the

plaintiffs that since the suit sale deeds were not executed by the defendants, the plaintiffs have incurred loss, and hence, the plaintiffs are entitled to get refund of Rs.1,17,000/-. It is further contended that since the amount(s) had been paid by the plaintiffs to the defendants and as the defendants were not ready and willing to execute the suit sale deeds in favour of the plaintiffs, the defendants are liable to pay interest on Rs.17,70,467/- (i.e. Rs.16,53,467/- + Rs.1,17,000/-) @ 24% per annum from 30.6.1997 to 03.04.2000 being the date of plaint, to the plaintiffs

5. It is admitted by the learned counsel for the plaintiffs that during the pendency of this suit, based on the request of the plaintiffs 1 and 2, they have been instructed to obtain refund of Rs.38,025/- each towards the un-used stamp papers and they have suffered loss on that score, as some amount(s) have been deducted towards statutory commission/charges to be paid to the Government.

6. Since it is admitted by the learned counsel for the plaintiffs that the plaintiffs have received Rs.76,050/- (Rs.38,025/- x 2) subsequent to the filing of the suit, they are not entitled to the decree in entirety as sought for in the plaint. Accordingly, the said amount of

Rs.76,050/- is hereby adjusted towards the suit claim.

7. Hence, the entitlement of the plaintiff is calculated as follows:

(a) Total of Exs.P-1 to P-3	: 15,23,467
(b) Total of Exs.P-8 and P-9	: 1,30,000
Total of (a) + (b)	: 16,53,467
<u>Add:</u> Value of non-judicial stamp papers	: 1,17,000
	: 17,70,467
<u>Add:</u> Interest @ 24% per annum 30.06.1997 to 03.04.2000 on Rs.17,70,467/-	
(i.e. 2 years, 9 months and 3 days)	: 11,72,000
	: 29,42,467
<u>Less:</u> Admitted amount on surrender of non-judicial stamp papers	(-) 76,050
	: 28,66,417

8. Accordingly, the suit is decreed, directing the defendants 1 to 3 shall jointly and severally pay the plaintiffs 1 and 2, the above said sum of Rs.28,66,417/- (Rupees twenty eight lakhs, sixty six thousand, four hundred and seventeen only), with interest at the rate of 24% per annum on Rs.17,70,467/- from the date of plaint,

i.e. from 03.04.2000, till the date of realisation. The defendants 1 to 3 are directed to pay proportionate costs to the plaintiffs.

Witnesses examined on the side of plaintiff:

P.W.1	Mr.A.Gani Mohammed (1st plaintiff)
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List of documents marked on the side of plaintiff:

Exhibit No.	Dated	Description
P-1	17.05.1994	Original sale agreement between the first plaintiff and defendants 1,2,3 & 6
P-2	17.05.1994	Original sale agreement between second plaintiff and defendants 1,2,3 & 6
P-3	17.05.1994	Original sale agreement between the third plaintiff and defendants 1,2,3 & 6
P-4	-	Copy of sale deed between the third plaintiff and defendants 1 to 6
P-5	-	Copy of sale deed between the first plaintiff and defendants 1 to 6
P-6	30.11.1996	Original notice issued by the Advocate of the defendants to the plaintiffs
P-7	18.12.1996	Copy of Reply issued by the Advocate of the plaintiffs to the Advocate of the defendants
P-8	27.06.1997	Original Receipt issued by the first defendant to the first plaintiff for having received Rs.1,25,000/-

<i>Exhibit No.</i>	<i>Dated</i>	<i>Description</i>
P-9	29.08.1997	Original Acknowledgement given by first defendant to the first plaintiff for having received Rs.5,000/-
P-10	15.11.1999	Copy of notice sent by the Advocate of the plaintiffs to defendants 1 to 3
P-11	27.11.1999	Original reply sent by the Advocate of the first defendant to the Advocate of the plaintiffs
P-12	27.11.1999	Registered notice sent by the second defendant's Advocate to the plaintiffs' Advocate
P-13	10.01.2000	Copy of rejoinder sent by the plaintiffs' Advocate to the Advocate of the defendants
P-14	-	Postal acknowledgement
P-15	04.02.2000	General Power of Attorney executed by the third plaintiff in favour of his son, i.e. first plaintiff

Witnesses examined on the side of defendants: Nil

List of documents marked on the side of defendants: Nil

List of Court documents marked: Nil

sd/.G.C.J

28.09.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/10.12.2015

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.