

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1374 of 2013

and M.P.No.1 of 2013

N.J.Senthil Kumar ... Appellant/Plaintiff

-Versus-

N.B.Subash. ... Respondent/Defendant

This second appeal is filed against the judgment and decree dated 09.04.2013 made in A.S.No.511 of 2012 by the learned XVII Additional Judge, City Civil Court, Chennai, reversing the judgement and decree dated 17.02.2012 made in O.S.No.3220 of 2008 by the learned XVI Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.R.Subrmanian

For Respondent : Mr.N.Rajan

JUDGMENT

The plaintiff in O.S.No.3220 of 2008 on the file of the learned XVI Assistant Judge, City Civil Court, Chennai, is the appellant herein. The respondent herein is the sole defendant in the suit. The said suit was filed by the appellant for specific performance of contract of sale based on an oral agreement of sale arrived at in the month of May, 2006. The defendant denied the said oral sale agreement. The defendant made a counter claim for recovery of possession. The trial court, by judgement dated 17.02.2012 decreed the suit and dismissed the counter claim. As against the same, the defendant filed a single appeal in A.S.No.511 of 2012 before the learned XVII Additional Judge, City Civil Court, Chennai, however, by paying court fees to challenge the decree passed in the suit as well as the decree rejecting the counter claim. The said appeal was heard by the learned XVII Additional Judge, City Civil Court, Chennai and by judgement and decree dated 09.04.2013, the learned Additional Judge, set aside the decree for specific performance, but, however, granted decree for recovery of possession, though the prayer made in the counter claim was for mandatory injunction and to handover the vacant possession. The first appellate court directed the defendant to pay the deficit court fee. As against the same, the plaintiff has come up with this second appeal.

2. In this second appeal, on 12.12.2013, the following substantial questions have been framed for consideration:

[1] Whether in law in the absence of any pleading in the written statement is the lower appellate court right in non suiting the plaintiff holding that there is no concluded contract?

[2] Has not the lower appellate court failed to exercise judicial discretion under Section 20 of Specific Relief Act and in the wake of the plaintiff's complying with Section 20(3) , whether the plaintiff is entitled to specific performance?

[3] Is not the finding of the lower appellate court about Exs.B.1 to B.4 perverse?

[4] Has not the lower appellate court acted without jurisdiction in arbitrary fixing the market value without any pleading or evidence and damages of Rs.2,500/- per month when the defendant has not even paid court fees?

[5] Is not the lower appellate court wrong in overlooking that the Assistant City Civil Court would cease to have jurisdiction above Rs.5,00,000/- in 2008 and consequently granting a decree for possession in the counter claim is without jurisdiction?

3. When the matter came up for hearing on 25.02.2015, it was reported to this court that the parties have settled the matter out of court. It was further reported to this court by the learned counsel on either side that the appellant/plaintiff has agreed to receive a sum of Rs.13,00,000/- [Rupees Thirteen Laksh only] in full and final settlement from the respondent/defendant and to give up all his claim over the suit property. Accordingly, for settling the amount, the matter was adjourned to today.

4. Today, the appellant as well as the respondent are present before this Court. They filed a joint memo dated 26.02.2015 wherein it has been stated as follows:-

"The above appeal had been filed against the decree and judgement in A.S.No.511 of 2012 on the file of XVII Additional City Civil Court, Chennai reversing the judgement and decree in O.S.No.3220 of 2008 on the file of XVI Assistant City Civil Court, Chennai. The plaintiff filed the suit for specific performance in which the defendant filed counter claim seeking recovery of possession. The suit was decreed and counter claim was dismissed. The lower appellate court has dismissed the suit and granted decree for counter claim. During the pendency of the appeal, the parties have agreed to

settle the dispute out of court on the following terms:

(1) the appellant/plaintiff agrees to receive the sum of Rs.13,00,000/- in full and final settlement and the respondent defendant is agreeable to pay the amount.

(2) The parties agree that the respondent shall pay a sum of Rs.3,37,002/- [vide Pay Order No.807332 drawn on Chennai Central Cooperative Bank Limited dated 26.02.2015] to the plaintiff and agrees that the plaintiff is entitled to withdraw the sum of Rs.9,62,998/- deposited by them to the credit of XVII Additional City Court, Chennai.

(3) The appellant agrees to handover vacant possession to the respondent within 4 weeks after removal of lock by the respondent in the suit property in the presence of appellant to enable him to take away his belongings kept in the suit property.

(4) The respondent agrees that he has no objection for the appellant/plaintiff to receive the sum of Rs.9,62,998 deposited before the XVII Additional City Civil Court, Chennai.

It is, therefore, prayed that this Hon'ble Court be pleased to dispose the second appeal by recording the joint memo and direct the Registry to refund the Court Fees by the appellant in the second appeal and thus render justice.

5. Today, in open court, the defendant has paid a sum of Rs.3,37,002/- by way of Pay Order [vide Pay Order No.807332 dated 26.02.2015 drawn on Central Cooperative Bank Limited, Chennai]. Admittedly, the defendant has deposited a sum of Rs.9,62,998/- to the credit of the XVII Additional City Civil Court, Chennai, as directed by the court. Now, the parties have agreed that the said amount shall be withdrawn by the plaintiff from the court below. The said statement is recorded.

6. The plaintiff has also agreed to vacate the suit property and to handover the vacant possession of the same to the defendant within a period of four weeks from today. The said statement is also recorded.

7. Having regard to the above settlement arrived by between the parties and in terms of the joint memo extracted herein above, I am inclined to dismiss this second appeal as settled out of court.

8. At this juncture, the learned counsel for the appellant would submit that the entire court fee paid may be refunded to him in view of the judgement of this court in Venkatachalam and others v. Sengoda

Gounder and others, 2014 (6) CTC 216. In para 7 of the said judgement, this court has held as follows:-

"7. In this case, though the matter is not settled through Lok Adalat, parties themselves have come forward for listing the matter before this Court. Even though the matter was not referred before Lok Adalat, the parties settled the matter voluntarily, and it has to be encouraged, otherwise the parties will not come forward to settle the matter and they will get a reference to the Lok Adalat. Thereafter, they will seek full Court-fee. To avoid such situation, the court referred the matter to Lok Adalat under Section 89 of CPC. This court is having ample power to grant full Court-fee in case of settlement between parties, even without any reference to the Lok Adalat. Therefore, this court directs the Registry to refund the full court-fee in this matter."

9. In the instant case also, though the matter has not been referred to the Lok Adalat and settled before the Lok Adalat, since it has been settled out of court between the parties, applying the decision in Venkatachalam's case [cited supra], I am inclined to issue a direction to the Registry to refund the entire court-fee paid in this second appeal to the appellant.

10. In the result, the second appeal is dismissed as settled out of court. The appellant/plaintiff is at liberty to make appropriate application before the first appellate court for refund of Rs.9,62,998/- lying in the credit of the said court which was deposited by the defendant as per the direction of the first appellate court. If any such application is made by the appellant/plaintiff the first appellate court shall refund the said amount to him without there being any need to issue notice to the respondent/defendant. The Registry is directed to refund the entire court fee paid in this second appeal to the appellant herein. Consequently, connected MPs are closed.

Sd/-

Assistant Registrar

Dated:4.3.15

True Copy

Sub Assistant Registrar

To

1.The XVII Additional Judge, City Civil Court, Chennai.

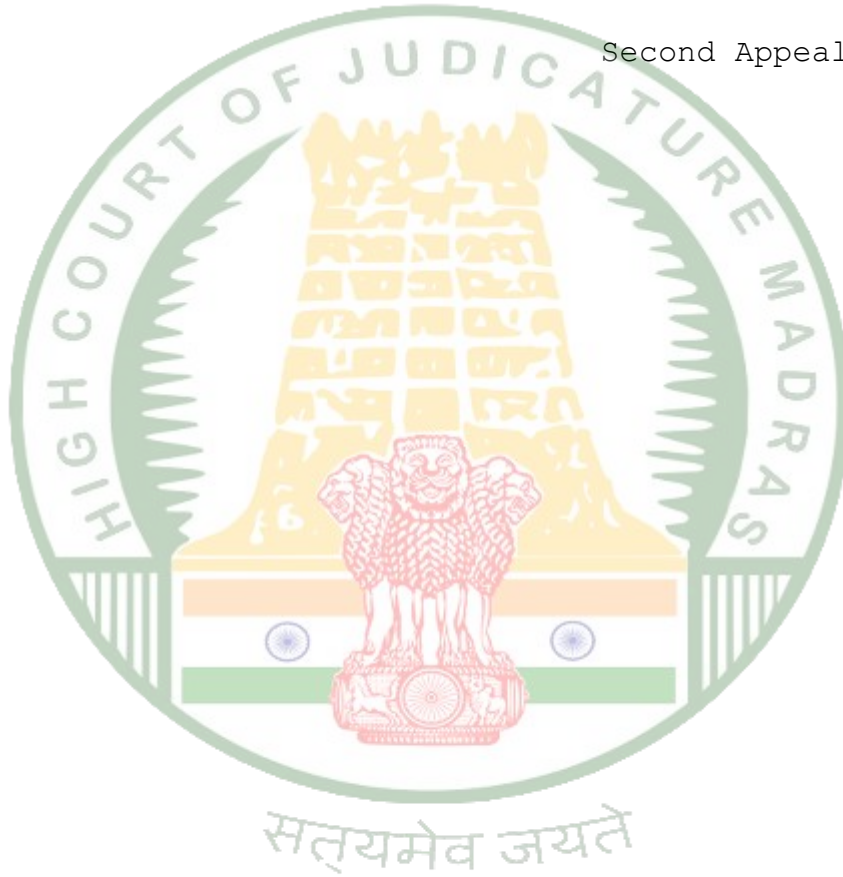
2.The XVI Assistant Judge, City Civil Court, Chennai.

+1 cc to Mr.N.Rajan, Advocate,SR.10732

+1 cc to Mr.R.Subramanian, Advocate,SR.10815.

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Second Appeal No.1374 of 2013



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