

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.384 of 2011 and
M.P.No.1 of 2011

1.M.V.Krishnamurthy
2.V.Swaminathan

3.M/s.Super Electricals
Rep. by its Partner
M.V.Krishnamurthy
Plot No.67, Developed Plots Estate,
Perungudi, Chennai - 600 096 ... Appellants/Defendants 2 to 4

Vs.

1.C.R.Satyanarayanan

2.Neelam ... Respondents 1& 2/Plaintiffs.

3.The Joint Director (Electronics)
Department of Industries and Commerce,
Chepauk, Chennai - 600 005. ... 3rd Respondents/1st Defendant.

(Cause title accepted vide order of Courts
dated 17.3.2011 made in M.P.No.1 of 2011
in SA.SR.No.20409/2011)

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree made in A.S.No.83 of 2010 dated 10.08.2010 on the file of the III Additional Judge, City Civil Court, Chennai reversing the judgment and decree made in O.S.No.6543 of 2006 dated 25.08.2009 on the file of the II Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.A.K.Sriram for
M/s.A.K.Kailasam and Associates

For Respondents: Mr.V.Bhiman for
M/s.Sampath Kumar Associates
for R1 and R2
Mr.PH.Arvinth Pandian
Additional Advocate General
Assisted by
Mr.T.Jayaramaraj, G.A. (CS) for R3

J U D G M E N T

The defendants 2 to 4 in O.S.No.6543 of 2006 on the file of the II Assistant Judge, City Civil Court, Chennai are the appellants herein. The respondents 1 and 2 herein are the plaintiffs in the suit and the third respondent herein is the first defendant in the suit.

2. The said suit was filed by respondents 1 and 2 herein for permanent injunction to restrain the first defendant from in any manner alienating or executing the sale deed in favour of the defendants 2 to 4 or any one else except in the name of the plaintiffs without the concurrence of the plaintiffs and till such time the dispute between the parties herein are settled.

3. The Trial Court, by a judgment and decree, dated 25.08.2009 dismissed the suit. As against the same, the plaintiffs filed an appeal in A.S.No.83 of 2010 before the III Additional Judge, City Civil Court, Chennai. By a judgment and decree dated 10.08.2010, the lower Appellate Court allowed the appeal, thereby, reversing the judgment and decree of the Trial Court and decreed the suit as prayed for. Challenging the same, the defendants 2 to 4 are before this Court with this second appeal.

4. The case of the plaintiffs is as follows:-

The suit property is owned by the Department of Industries and Commerce (first defendant). The first defendant developed an industrial area at Perungudi, in which, the suit property was assigned Plot No.67. The plaintiffs were allotted Plot No.74. The appellants/defendants 2 to 4 have established business on the suit property and they were running the same. On 10.02.2006, the plaintiffs claimed that they entered into an agreement (Memorandum of Understanding) with defendants 2 to 4, thereby, agreeing to purchase the business of the defendants for a total sale consideration of Rs.1,65,00,000/- (Rupees One crore sixty five lakhs only). A sum of Rs.22,00,000/- (Rupees Twenty two lakhs only) was paid under the said agreement. But the plaintiffs have not taken over possession. The possession of the suit property remains with defendants 2 to 4. The Government has not so far executed any sale deed in respect of the suit property in favour of defendants 2 to 4.

5. According to the plaintiffs, by suppressing the above agreement and by deceiving the plaintiffs, the defendants 2 to 4 were making arrangement to get the sale deed executed by the Government (first defendant) in favour of defendants 2 to 4. Therefore, the plaintiffs filed the present suit for the above relief.

6. The defendants 2 to 4 filed a written statement, wherein, they contended that the Memorandum of Understanding, dated 10.02.2006 was not for the purpose of selling the suit property by the defendants 2 to 4 in favour of the plaintiffs. It was only an understanding by which the defendants 2 to 4 agreed to take the plaintiffs as partners in the partnership firm, so as to run the business. It was further contended that the first defendant had not executed any sale deed in favour of defendants 2 to 4. It was also contended that as per the terms and conditions of the allotment order, the first defendant is bound to execute the Sale Deed only in favour of defendants 2 to 4. Thus, according to the defendants 2 to 4, the suit was liable to be dismissed.

7. The first defendant, did not appear before the Trial Court despite service of summons. The first defendant did not choose to contest the matter, though, admittedly, the suit property belongs to the first defendant. The Trial Court set the first defendant ex parte. Based on the above pleadings of the plaintiffs and defendants 2 to 4, the Trial Court framed appropriate issues.

8. On the side of the plaintiffs, the first plaintiff was examined as P.W.1 and as many as six documents were exhibited on the side of the plaintiffs. On the side of the defendants, the second defendant was examined as D.W.1 and as many as three documents were exhibited. Having considered all the above, the Trial Court dismissed the suit, which was reversed by the lower Appellate Court. That is how defendants 2 to 4 are before this Court with this second appeal. In this second appeal, on service of notice, respondents have entered appearance.

9. Today, when this second appeal was taken up for admission, Shri.Jagmohan Singh Raju, the Principal Secretary/Industries, Commissioner and Director of Industries and Commerce (Incharge) made appearance before this Court as directed by this Court.

10. I have heard the learned counsel for the appellants, the learned Additional Advocate General appearing for the third respondent and the learned counsel appearing for respondents 1 and 2/plaintiffs and I have also perused the records carefully.

11. This second appeal has today come up for admission. The learned counsel for the appellants would submit that as per the Memorandum of Understanding, what was agreed to be purchased, even according to the plaintiffs, was only the business and not the suit property. The learned counsel would further submit that as a matter of fact, it is in evidence that the agreement was only to take the plaintiffs as partners in the business and that was also later on cancelled. According to the learned

counsel, the lower Appellate Court was not right in decreeing the suit as prayed for, because, the Government is the owner of the property and the Government is bound to execute the Sale Deed only in favour of the appellants.

12. The learned counsel for respondents 1 and 2/plaintiffs would vehemently oppose this appeal. According to him, there is enough evidence to prove the Memorandum of Understanding and also there is enough evidence to prove that a sum of Rs.22 lakhs has already been paid by the plaintiffs to defendants 2 to 4. He would further submit that as per the said understanding, the Sale Deed for the suit property should be executed by the first defendant only in favour of the plaintiffs. He would further submit that there is no substantial question of law at all involved in this second appeal.

13. I have considered the above submissions.

14. From the above narration of facts and the pleadings, the evidence let in and from the submissions of the learned counsel on either side, I have found the following substantial questions of law to be answered:-

"a) Whether the lower Appellate Court was right in decreeing the suit as prayed for when the first defendant retains the possession of the property and the so called Memorandum of Understanding would not bind the first defendant?
b) Whether the lower Appellate Court was right in decreeing the suit as prayed for when the first defendant is not bound to execute the sale deed in contravention of the allotment order and the Deed of Assignment made by the first defendant in favour of defendants 2 to 4?"

15. The learned Additional Advocate General would submit that it was not right on the part of the officials of the first defendant to have remained ex parte before the Trial Court. He would further submit that from the reading of the file, it turns out that, probably, the officials were under the mistaken impression that they had no contest in the suit, since the main issue was between the plaintiffs and defendants 2 to 4. However, he would submit that now the grave mistake committed by the officials of the first defendant in remaining ex parte is realised. He would submit, on going through the records, that the suit property was allotted to defendants 2 to 4 by means of an allotment order, dated 09.01.1979. The suit property was handed over to defendants 2 to 4 on 30.07.1980. There after, a Deed of Assignment was executed on 11.06.1984. But according to him, the defendants 2 to 4 have committed serious violation of the terms and conditions and therefore, Sale Deed has not so

far executed by the first defendant to defendants 2 to 4. He would further submit that appropriate action is contemplated by the first defendant in respect of the above said violations so as to resume the property by following the procedure established by law.

16. In this second appeal, I am not concerned with the issue as to whether any violation has been committed by defendants 2 to 4 and whether the first defendant is bound to re-possess the land. I am not also concerned as to whether the first defendant is bound to execute any sale deed in favour of defendants 2 to 4. These are all foreign to the issues involved in the present second appeal.

17. Admittedly, from the pleadings and from the evidence and also from the submissions made by the learned counsel on either side, it is crystal clear without any doubt that the suit property, as of now, belongs only to the first defendant. The so called Memorandum of Understanding between the plaintiffs and the defendants 2 to 4 would not bind the first defendant at all, because, the first defendant was not a party to the understanding. Neither the said Memorandum of Understanding was entered into with the consent of the first defendant.

18. As a matter of fact, according to the learned Additional Advocate General, the said Memorandum of Understanding itself is a clear violation of one of the conditions of allotment. The suit is also not for enforcement of any agreement between the plaintiffs and defendants 2 to 4. It is a simple suit for permanent injunction to restrain the first defendant from executing the sale deed in favour of defendants 2 to 4. As per the allotment order, sale deed has to be executed by the first defendant only in favour of defendants 2 to 4, provided, defendants 2 to 4 have complied with all the conditions of allotment and they have not violated any of the conditions. If at all, the first defendant is bound to execute any sale deed, defendants 2 to 4 can force the first defendant to execute the sale deed only in their favour and not in favour of any third party, that too, if there is no violation of conditions and if the defendants 2 to 4 have complied with all the conditions. At any rate, the plaintiffs have no interest over the suit property. As I have already pointed out, the so called Memorandum of Understanding entered into between the plaintiffs and defendants 2 to 4 was not by the first defendant and the same shall not create any interest for the plaintiffs in the suit property. All these aspects have not been considered by the lower appellate court. Thus, the lower appellate court has committed grave error in decreeing the suit as prayed for. Accordingly, I answer both the substantial questions of law in favour of the appellants and against the respondents 1 and 2.

19. In view of the above, the second appeal deserves to be allowed and the decree and judgment of the lower appellate court is liable to be set aside and that of the trial Court is liable to be restored.

20. The learned counsel for respondents 1 and 2/plaintiffs would submit that the plaintiffs had parted with Rs.22 lakhs and therefore, their interest may be protected. In this regard, except expressing sympathy, this Court cannot issue any direction or modify the decree in their favour so as to direct the defendants 2 to 4 to pay the said amount. That dispute is totally different and the plaintiffs can very well resolve the said dispute in the manner known to law.

21. The learned Additional Advocate General would submit that already notice has been issued by the first defendant to defendants 2 to 4 on 10.08.2006 for taking further action to re-possess the land on the ground of violation of certain conditions. He would further submit that it may be clarified that the first defendant may proceed further to re-possess the land. As of now, the land would be worth several crores and that defendants 2 to 4 have committed serious violation. In this regard, I do not want to express any opinion in this second appeal because that issue is not before me. It is for the first defendant to work out his remedy in the manner known to law.

22. So far as the Government officials remaining ex parte before Civil Courts, this is a classic case and it is not the only case. Very often, this Court has come across suits, appeals and other proceedings, where the Government officials remain ex parte without responding to the notice or summons issued by the Court. In my considered view, the Government officials should scrupulously respond to the summons or notices issued by the courts. If they do not respond, it will be difficult for the Courts to do justice expeditiously.

23. The Principal Secretary (Industries), Commissioner and Director of Industries and Commerce (i/c), who was present before this Court submitted to the Court that he would ensure that appropriate instructions are issued to officials of the Government in this regard. The learned Additional Advocate General, in all fairness, submitted that he would see to it that there shall be appropriate Government Order or Circular issued by the Government to all departments to ensure that the officials, who are summoned, appear before the Courts and place their case without fail and without allowing themselves to be set ex parte.

24. I am only hopeful that the Government will seriously look into this issue and issue appropriate Government Order or Circular in this regard.

25. In the result, the second appeal is allowed and the decree and judgment of the lower Appellate Court dated 10.08.2010 is set aside and that of the Trial Court dated 25.08.2009 is restored. No costs. Consequently, connected miscellaneous petition is closed.

svki

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

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

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

+ 1 cc to M/s.A.S.Kailasam & Associates, Advocate SR 69103

+ 1 cc to M/s.Sampathkumar & Associates, Advocate SR 69459

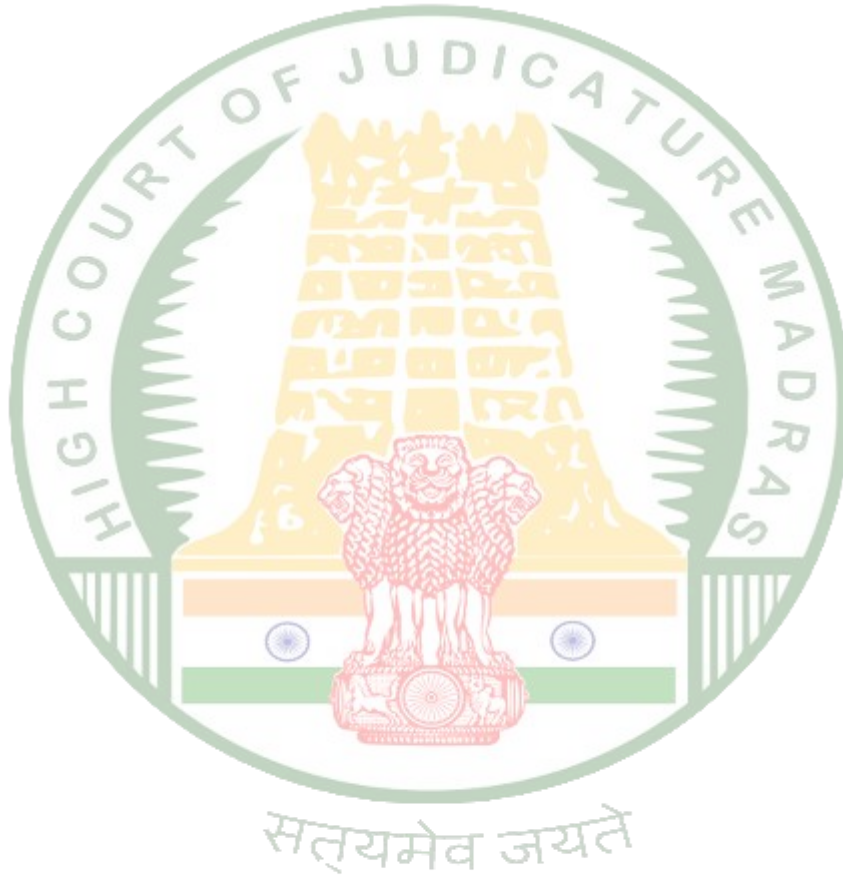
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