

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-09-2015

(Judgment Reserved on 09-09-2015)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Civil Suit No.183 of 2010

S.Devarajan ... Plaintiff

Vs.

1. Mrs.Kamal Hiro Bharwani

2. Mr.Hiro Bharwani

(Second defendant died - Vide
Memo dated 03.03.2014, filed
by the counsel for the plaintiff -
recorded by this Court today-30.09.2015)

3. Mr.Lal Chand Menghraj ... 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 defendant to re-pay the plaintiff a
sum of Rs.29,15,000/-, with further interest @ 24% per
annum on Rs.27,50,000/- from the date of plaint till the
date of realisation, and

(b) to direct the defendants to pay the costs of the
suit.

For plaintiff : Mr.J.Nandagopal

For defendants : Set ex-parte on 27.02.2015

D-2 died

JUDGMENT

It is the case of the plaintiff that his sister, namely the first defendant, had a Farm House in Vadanemali Village, near Chennai, which she wanted to sell; the second defendant (husband of the first defendant), who was residing in Hong Kong, was the Power of Attorney of the first defendant; the second defendant was to finalise the sale proceedings on being discussed; the plaintiff visited the said property and expressed his willingness to the third defendant by taking steps to purchase the same; the plaintiff was introduced by the third defendant over telephone and the second defendant expressed desire to the plaintiff to part with the said property as recommended by the third defendant, and the second defendant mentioned that, on his plan to visit Chennai, the locker with the State Bank of India would be opened and arranged for providing documents in respect of the said property; the Personal Assistant of the second defendant handed over only few documents in respect of the said property (Farm House);

the second and third defendants demanded Rs.25,00,000/- from the plaintiff; that defendants 2 and 3 informed the plaintiff that another party was interested in buying the said property at a much higher price than the said amount demanded by the defendants 1 and 2; the plaintiff agreed to pay the advance amount as demanded by them and they insisted on the Bank Draft payable in Chennai only; accordingly, the plaintiff arranged and duly issued Demand Draft for the said amount of Rs.25 lakhs by arranging the amount through the plaintiff's borrowings from family members and the said Demand Draft, dated 21.10.2009, was handed over to the third defendant on 21.10.2009 itself; the Bank concerned confirmed encashment of the said Demand Draft on 23.10.2009 in favour of the first defendant; ultimately, the second defendant came down to Chennai only on 12.11.2009; when the plaintiff went to the place of stay of the second defendant, he came out only with a skeleton set of documents and at that time, the plaintiff's Advocate sought for all related documents of the property in question for legal clarifications; defendants 1 and 2 demanded further advance amount of Rs.25 lakhs, in order to meet the legal requirements of the plaintiff's Advocate, before-ever the sale negotiations took place between the

parties or without even entering into a sale agreement; the plaintiff demanded refund of Rs.25 lakhs earlier paid by him as advance to the defendants 1 and 2, for which, there was no proper response from them, resulting in the plaintiff lodging a Police complaint on 01.12.2009 before the Crime Branch, Chennai, which was closed on 19.01.2010 by the Police without enquiry, as the dispute is civil in nature, as evident from the letter dated 19.01.2010 in Petition No.1903/DC-CCB/09/PE; since the contract itself is not concluded between the plaintiff and the defendants 1 and 2, the defendants are liable to re-pay Rs.25 lakhs with 24% interest; E-mail correspondences took place between the plaintiff and the second defendant on various dates; the third defendant (acting as a broker), demanded Rs.2,50,000/- as brokerage, which was paid by the plaintiff on 21.10.2009; the cause of action for filing this suit arose only in Chennai, which is within the jurisdiction of this Court and accordingly, the suit was valued and Court fee paid in accordance with the provisions of the Tamil Nadu Court Fees and Suits Valuation Act. Hence, alleged as above, the plaintiff has filed the suit to direct the defendants to re-pay him Rs.29,15,000/- with further interest @ 24% per annum on Rs.27,50,000/- from the date

of plaint till the date of realisation and also to direct them to pay the costs to the plaintiff.

2. This Court set the defendants ex-parte on 27.02.2015.

3. During the course of trial, the plaintiff examined himself as P.W.1 and marked Exs.P-1 to P-7.

4. Upon hearing the learned counsel for the plaintiff and on an analysis of the above oral and documentary evidence adduced on the side of the plaintiff, it is clear that the plaintiff has proved his case.

5. Hence, the suit is decreed ex-parte, as prayed for, as against the defendants 1 and 3, with costs. The suit is dismissed as abated as against the deceased second defendant.

Witnesses examined on the side of plaintiff:--P.W.1 - S.Devarajan (plaintiff)

List of documents marked on the side of plaintiff:--

<i>Exhibit No.</i>	<i>Dated</i>	<i>Description</i>
P-1	18.09.2009	Copy of E-mail sent by the second defendant to the plaintiff
P-2	27.09.2009	Copy of E-mail sent by the second defendant to the plaintiff
P-3	19.10.2009	Copy of E-mail sent by the second defendant to the plaintiff

<i>Exhibit No.</i>	<i>Dated</i>	<i>Description</i>
P-4	21.10.2009	Original payment receipt issued by the third defendant to the plaintiff, along with the lodgment schedule for payment of deficit stamp duty
P-5	18.11.2009	Office copy of the letter sent by the plaintiff to the defendants 2 and 3 along with the postal receipts
P-6	24.11.2009	Original reply notice sent by the first defendant's counsel to the plaintiff
P-7	21.11.2009	Copy of E-mail given by Canara Bank, Habibulla Road Branch, Chennai

Witnesses examined on the side of defendants:-- Nil

Documents marked on the side of defendants:- Nil

Court witness and Court document : Nil

Sd/. G.C.J

30.09.2015

//Certified to be a true copy//

Dated this the day of 2016

R.s/18.01.2016

COURT OFFICER

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