

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.12.2016

PRONOUNCED ON 22..12.2016

CORAM

**THE HON`BLE MR.JUSTICE N.SATHISH KUMAR**

C.S.No.451 of 2011

1. D.Sudhakar Rao  
2. M.Geetha Lakshmi

.. Plaintiffs

vs.

G.Sankaran

.. Defendant

Civil Suit filed under Order VII Rule VII of CPC and Rule IV of Original Side Rules praying for judgment and decree for recovery of a sum of Rs.57,90,000/- (Rupees Fifty Seven Lakhs and Ninety Thousand only) i.e., Rs.30,00,000/- (Rupees Thirty Lakhs Only) towards principal and Rs.27,90,000/- (Rupees Twenty Seven lakhs and ninety thousand only) towards interest at the rate of 36% per annum for the period of 31 months

commencing from 12.10.2008 to 09.06.2011 and further claims interest as decided by this Court on the principal sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) from the date of the plaint till the date of realisation and to grant costs.

ii) directing the defendants to pay the cost of the suit.

For Plaintiff : Mr.P.Subbareddy

For defendants : Ms.S.Annamalai

### **J U D G M E N T**

The suit is filed for recovery of sum of Rs.30,00,000/- together with interest at the rate of 36% p.a for Rs.30,00,000/- for 31 months and further claims, as decided by this Court on Rs.30,00,000/- from the date of plaint till the date of realisation.

2.The brief facts of the case of the plaintiffs are as follows:

According to the plaintiffs they entered into a Sale

Agreement with the defendant to buy the suit Schedule property for a total sale consideration of Rs.60,00,000/- on 12.06.2008. It is stated by the plaintiffs that on the date of agreement, i.e., 12.06.2008, the plaintiffs paid a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) towards advance to the defendant. It is further stated that subsequent to the payment of the advance amount, another sum of Rs.15,00,000/- has been paid to the defendant. Though the plaintiffs were ready and willing to pay the balance sum of Rs.30,00,000/-, the defendant did not come forward to sell the property. It is stated that the defendant has mortgaged the property. Therefore, the plaintiffs issued a notice dated 10.5.2010 demanding the said sum, but there was no reply. Hence, the plaintiffs have no other option but to file a suit for recovery of money.

3. The case of the defendant, in nutshell, is as follows:

Denying the allegations made in the plaint, it is the contention of the defendant that suit is neither maintainable in

law nor on facts and deserves to be dismissed in limine. The defendant is doing real estate business and for the said purpose, the defendant raised a loan to the tune of Rs.30,00,000/- towards loan with the plaintiffs for which, the defendant offered the schedule mentioned property as security for the repayment of the said loan. It is further stated that the defendant was forced to execute the alleged sale agreement, which is evident from the Memorandum Of Understanding **(In short "MOU")** dated 12.06.2008. Since the defendant never offered to sell the schedule mentioned property, as pleaded by the plaintiffs, the defendant mortgaged the suit property and raised loan. It is also stated by the defendant that even after the expiry of the alleged contract, the plaintiffs have not chosen to file any suit for specific performance. Therefore, it is clear that there is no valid contract of sale. Thus, the defendant prayed for dismissal of the suit.

4. On the above pleadings, originally, this Court, on 06.11.2013, has framed the following issues:

1. Whether the defendant has received a total sum of Rs.30,00,000/- (Rupees Thirty Lakhs) or not?

2. Whether the defendant mortgaged the property which is the subject matter of sale agreement or not?

3. Whether the plaintiff is entitled for return of the money received by the defendant Rs.30,00,000/- (Rupees Thirty Lakhs) along with interest or not?

4. Whether the plaintiff is entitled for the suit claim or not?

5. Whether the sale agreement dated 12.06.2008 is valid and enforceable in law?

6. Whether the plaintiff is liable to return the sale deed in respect of schedule mentioned property offered as security by the defendant in connection with the loan transaction?

7. To what other reliefs, the parties are entitled to?

5. On the side of the plaintiff, P.W.1 was examined and Exs.P1 to P4 were marked. On the side of the defendants, D.W.1 was examined and no documents were marked. The details of the documents are hereunder:

**Exhibits produced on the side of the plaintiff:**

| <i>S.No.</i> | <i>Exhibits</i> | <i>Date</i> | <i>Description of documents</i> |
|--------------|-----------------|-------------|---------------------------------|
| 1.           | P-1             | 12.06.2008  | Sale Agreement                  |
| 2.           | P-2             | 12.06.2008  | Memorandum of Understanding     |
| 3.           | P-3             | 10.05.2010  | Notice                          |
| 4.           | P-4             | 05.02.2011  | Compromise Agreement            |

**Witnesses examined on the side of the plaintiffs:**

P.W.1. - D.Sudhakar Rao

**Witnesses examined on the side of the defendant**

D.W.1 – G.Sankaran

6. Heard, Mr.P.Subbareddy, the learned counsel appearing for the plaintiffs and Mr. S.Annamalai, the learned counsel appearing for the defendant and perused the records.

7. Learned counsel for the plaintiffs submitted that though the plaintiffs have originally entered into a sale agreement and paid advance of Rs.15,00,000/- on the date of agreement and another sum of Rs.15,00,000/- on various dates and that they were always ready and willing to purchase the property, the defendant has mortgaged the property to third party by depositing all title deeds. Therefore, the plaintiffs filed a suit for recovery of money.

8. It is the contention of the learned counsel for the plaintiffs that Exs.P1 to P4 would prove the receipt of Rs.30,00,000/- by the defendant. It is also the contention of the learned counsel for the plaintiffs that the amount of Rs.30,00,000/- was also admitted by the defendant in the written statement as well as in his evidence. Therefore, the learned counsel prayed for judgment and decree as prayed for.

9. The learned counsel for the defendant in his argument conceded that the defendant has received a sum of Rs.30,00,000/- towards loan for which, he offered the schedule mentioned property as security and he has never intended to sell the suit property to the plaintiffs. However, the learned counsel for the defendant submitted that the interest claimed by the plaintiffs is exorbitant and is not sustainable in the eye of law. Hence, the learned counsel for the defendant prayed for dismissal of the suit.

10. In reply to the arguments advanced by the learned counsel for the defendant, the learned counsel for the plaintiffs fairly submitted that the plaintiffs are not very particular with regard to the interest they claimed and hence, he prays the Court to fix any reasonable rate of interest.

11. In the light of the above submissions, this Court recast the issues as follows:

1. Whether the plaintiffs are entitled to the amount claimed with interest as prayed for?
2. To what other reliefs, the parties are entitled to?

**Issue No:1 to 3:**

12. It is the contention of the learned counsel for the plaintiffs that the plaintiffs have entered into an agreement for purchase of the schedule mentioned property and paid a sum of

Rs.30,00,000/- as advance, i.e, a sum of Rs.15,00,000/- on the date of agreement and another sum of Rs.15,00,000/- on various dates. The alleged agreement stipulates one year time for execution of the sale and also for paying the balance consideration of Rs.45,00,000/-. Ex.P1 is the registered sale agreement dated 12.06.2008 and Ex.P2, is the MOU dated 12.7.2008 entered into between the plaintiffs and the defendant. When Ex.P2, MOU is carefully perused, it is seen that the defendant has received a sum of Rs.30,00,000/- from the plaintiffs for the purpose of real estate business. The conduct of the parties while entering into MOU on the date of the sale agreement, clearly shows that the entire transaction is nothing but money transactions. Ex.P1 is not intended for sale of properties. Ex.P3 is the notice sent to the defendant demanding interest on the amount. Subsequently the Compromise Agreement is entered into between the parties on 05.02.2011, wherein also the defendant has agreed that he has borrowed a sum of Rs.30,00,000/-.

13. From the above documents, it can be easily inferred that Ex.P1 is not for sale and in fact, the entire contract pertains to money transaction and that the defendant has received a sum of Rs.30,00,000/- from the plaintiffs. Furthermore, under Ex.P2, MOU, the defendant agreed to pay 24% interest.

14. D.W.1, in his evidence, also admitted the loan amount of Rs.30,00,000/- from the plaintiffs. Though he has stated in his evidence that he has repaid the amount to the plaintiffs, no documents, whatsoever, has been filed by the defendant to substantiate the same. The defendant, having admitted that he has received a sum of Rs.30,00,000/- from the plaintiffs, now cannot take a contra stand that he repaid the amount. Moreover, no piece of paper, whatsoever, filed towards discharge of the said amount. In the absence of any evidence to prove the so called discharge, the contention of the defendant that he has repaid the amount cannot be accepted. On a careful perusal of

Exs.P1 to P4, it is clear that the defendant is liable to pay the loan amount amount of Rs.30,00,000/- to the plaintiffs.

15. Though the defendant has agreed to pay 24% interest in Ex.P2, MOU, having regard to the fact that the learned counsel for the plaintiffs fairly conceded that any reasonable rate of interest may be fixed by the Court, in order to meet the ends of justice, this Court is inclined to award interest at 18% on the principal amount of Rs.30,00,000/-, from 12.10.2008 to 09.06.2011. Accordingly, the plaintiffs are entitled to interest at the rate of 18% p.a. on the amount of Rs.30,00,000/- from 12.06.2008, i.e. the date of entering into MOU, to 09.06.2011, i.e. the date of filing of the suit and, thereafter at 6% from the date of the suit till the date of realisation.

The suit is decreed in the above terms with costs.

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Index : Yes/No

Internet : Yes/No

**N.SATHISH KUMAR, J**

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