

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.12.2016

PRONOUNCED ON 21.12.2016

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.1 of 2013

Dr.V.Kalanidhi .. Plaintiff

vs.

1. K.S.Ramesh
2. K.S.Suresh
3. K.K.Shanmugam .. Defendants

Civil Suit filed under Order IV Rule 1 of Original Side Rules 1956 read with Order VII Rule 1 CPC praying for the following judgment and decree against the defendants.

a) A sum of Rs.1,00,00,000/- together with interest at the rate of 24% per annum till the date of realisation.

b) costs of the suit;

For Plaintiff : Mr.A.R.L.Sundaresan, Sr. Counsel
for Mr.V.Venkatesan

For defendants : Ex-parte

J U D G M E N T

The suit is filed for recovery of a sum of Rs.1,00,00,000/- together with interest at the rate of 24%

per annum till the date of realisation.

2. The brief case of the plaintiff is as follows :

The defendants being the owners of the Plot No.A-68, measuring to an extent of 2/3 undivided share in 2400 sq.ft. land with building in Kodambakkam Village, agreed to sell the property to the plaintiff. Besides they also agreed to sell the property situated at Dindivanam. Towards the above agreement, in the month of April to June 2008, they received a sum of Rs.70,00,000/- by way of cash and received another sum of Rs.40,00,000/- by way of two cheques in the name of the first defendant. Towards the above agreement, the defendants 1 and 2 executed two separate sale agreements dated 16.06.2009. In respect of the property situate at Dindivanam, they executed a sale deed dated 16.06.2009. However, inspite of the agreement for sale, of the plot in Kodambakkam Village, the defendants have entered another agreement of sale dated 26.02.2010 to one Rajesh. The plaintiff demanded the defendants either to execute the sale deed or to return the amount of Rs.1,10,00,000/-. But the defendants evaded. As a result, a police complaint has also been filed against them. On 14.11.2009, the first defendant has also acknowledged the receipt of Rs.1,10,00,000/- by the

defendants 1 and 2 and executed a letter. As the defendant failed to perform the contract and refused to execute the sale deed, the plaintiff is constrained to file the present suit for recovery of Rs.1,00,00,000/- with interest at the rate of 24% per annum.

3. Though notice was served on the defendants long back, they have not chosen either to appear in person or through counsel. Therefore, they were set ex parte by this Court on 30.8.2016.

4. On the side of the plaintiff, plaintiff examined himself as P.W.1 and Ex.P.1 to Ex.P.7 were marked.

5. Heard the learned counsel for the plaintiff and perused the records.

6. P.W.1 in his evidence has spoken about the agreements in respect of the plot situate in Chennai. The defendants have executed a sale deed in respect of the property situate at Dindivanam. He has also spoken about the acknowledgment of writing given by the first defendant in writing for a sum of Rs.1,10,00,000/- on behalf of the first and second defendants.

7. Ex.P.1 is the agreement for sale wherein the second defendant has agreed to sell the property of the flat bearing Door No.11 for a total sale consideration of

Rs.50,00,000/- . The receipt of the amount of Rs.50,00,000/- by the second defendant has been established in Ex.P.1. Ex.P.2 is also a similar agreement towards payment of Rs.50,00,000/- on the date of the agreement . These agreements were executed on 16.03.2009. Though these agreements were registered one, there is no time stipulation mentioned in the agreement. Ex.P.4 dated 14.11.2009 is an acknowledgment in writing by the first defendant, acknowledging the receipt of 1,10,00, 000/- . Ex.P.5 documents shows that though property having sold in favour of the plaintiff relating to the Dindivanam property, the defendants executed another sale agreement in favour of one Balaji. These documents clearly indicate the refusal on the part of the defendant to honour the agreement. Therefore, refusal on the part of the defendants to fulfill their obligation can be inferred from the agreement under Ex.P.5. Therefore, the suit for enforcing the agreement can be filed within a period of three years. Besides, the first defendant has also acknowledged the amount in writing as stated above. From these documents, it can be concluded that the defendants 1 and 2 have in fact executed sale agreements and received a sum of Rs.1,00,00,000/- and failed to repay the amount.

Hence, this Court is of the view that the defendants 1 and 2, jointly and severally are liable to pay the above said amount. Accordingly, the suit is liable to be decreed as against the defendants 1 and 2.

8. The third defendant merely signed as a witness in the agreement and hence, he cannot be fastened with the liability. Hence, the suit against the third defendant is liable to be dismissed.

9. Accordingly, the suit is decreed as against the first and second defendants for a sum of Rs.1,00,00,000/- with subsequent interest at the rate of 6% per annum with costs. The suit against the third defendant is dismissed. No cost.

Sd/ N.S.K.J

21.12.2016

//Certified to be a true copy//

Dated this the day of 2017

R.s/25.02.2017 COURT OFFICER
From 25.09.2008 the Registry is issuing certified copies of
the Order/Judgment Decree in this format.