



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.06.2016

Coram:

THE HONOURABLE MS.JUSTICE R.MALA

S.A(MD)No.464 of 2016

P.Manickam

.. Appellant/Appellant/Plaintiff

vs.

K.Selvamanickam

.. Respondent/Respondent/Defendant

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgement and Decree made in A.S.No.37 of 2006, dated 07.02.2007 on the file of the Sub Court, Aruppukkottai, confirming the Judgment and Decree made in O.S.No.183 of 2004 dated 19.04.2006 on the file of the District Munsif Court, Aruppukkottai.

For Appellant : Mr.R.Vijayakumar

For Respondent : Mr.AN.Ramanathan

JUDGMENT

The plaintiff, who lost the battle in both the Courts, has come forward with the Second Appeal challenging the Decree and Judgment passed in A.S.No.37 of 2006, dated 07.02.2007 by the Sub Court, Aruppukkottai, by confirming the Decree and Judgment made in O.S.No.183 of 2004, dated 19.04.2006 by the District Munsif Court, Aruppukkottai.

2. Heard the learned counsel for the appellant and the learned counsel for the respondent.

3. The appellant/plaintiff has filed a suit in O.S.No.183 of 2004 stating that he entered into an agreement for construction of the house and that agreement was for Rs.2,90,400/-. On 06.11.2000, he paid a sum of Rs.40,000/- by way of cheque drawn on the State of India, Aruppukkottai, for construction of the compound wall. But the compound wall was not constructed. Hence, he filed the suit for recovery of the amount.

4. The respondent/defendant has raised a plea that there is no construction of the compound wall. The entire amount has been paid only for additional construction of the building. Hence, he is not liable to pay the amount.



5. The trial Court, after considering the pleadings, framed necessary issues and dismissed the suit stating that there is no agreement for construction of the compound wall. Against which, an appeal has been preferred in A.S.No.37 of 2006.

6. The first Appellate Court, after considering the arguments of both sides, framed the points for consideration, concurred with the finding of the trial Court and dismissed the appeal. Against which, the present Second Appeal has been filed.

7. The learned counsel appearing for the appellant would submit that without pleading, during the trial only he raised the plea that "compound" has been subsequently inserted. So that factum was not considered by the trial Court and prayed for admitting the Second Appeal.

8. On a perusal of the entire records, it shows that the construction cost of Rs.2,90,400/- was fixed. But, admittedly on 06.11.2000, cheque for Rs.40,000/- has been given and that has been admitted by the respondent. But the case of the defendant is that the said amount has been given for additional construction, but the compound wall has not been mentioned.

9. On perusal of Ex.A.1-contract agreement document and Ex.A.2-accounts found in the backside of the contract agreement document, shows that it was not stated for construction of a compound wall. Furthermore, on the day I.e., on 06.11.2000, it was specifically mentioned that amount was settled and signed by the respondent.

10. In such circumstances, both the Courts below found that after construction of the building, account has been settled and a sum of Rs.40,000/- by way of cheque has been received for additional construction work and hence, there is no substantial questions of law arisen in the Second Appeal for consideration and the same is dismissed at the stage of admission itself. No costs.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS)

To

1.The Subordinate Judge, Aruppukkottai.

2.The District Munsif, Aruppukkottai.

+1cc to M/s.R.Vijayakumar, Advocate, Sr.No.29187

+1cc to M/s.AN.Ramanathan, Advocate, Sr.No.29590

ps

JM/GSV-PM/SAR-I/20.06.2016/2P-5C