**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Dated : **24.11.2017**

CORAM:

**THE HONOURABLE MR.JUSTICE A.SELVAM**
**and**
**THE HONOURABLE MR.JUSTICE P.KALAIYARASAN**

**A.S.No.267 of 2017**
**and C.M.P.Nos.10269 and 13466 of 2017**

K.Venkatachalam .. Appellant

Vs.

R.Chinnasamy .. Respondent

Appeal Suit filed under Section 96 r/w Order 41 Rule 1 of the Code of Civil Procedure, against the Judgment and Decree, dated 25.01.2017 made in O.S.No.243 of 2014 on the file of the III Additional District Court, Salem.

For appellant : Mr.V.Raghavachari
for Mr.R.Marudhachalamoorthy

For respondent : Mr.S.Kalyanaraman

**JUDGMENT**

(Judgment of the Court was delivered by
**P.KALAIYARASAN, J** )

This Appeal Suit has been directed against the Judgment and Decree of the III Additional District Court, Salem, dated 25.01.2017 in O.S.No.243 of 2014 directing the defendant to pay the suit claim with interest at 9% on principal from the date of plaint and subsequent interest of 6%.

2. The case of the respondent / plaintiff is that the plaintiff, defendant, one Raji and one Mani were jointly doing real estate business from 2007. The defendant did not render true accounts. Hence panchayat was convened on 23.11.2011. In the panchayat the defendant agreed to give Rs.30,00,000/- to the plaintiff as the share in the real estate business and assured to give further amount after perusing the accounts. Further he agreed in alternate that he would allot land worth of Rs.30,00,000/- in the property pertaining to the sale agreement, dated 24.12.2009 entered into by the plaintiff and the defendant with one Ashok, S.Venkatachalam and Ramesh. To that effect the defendant also executed an agreement in favour of the plaintiff on 23.11.2011. The defendant assuring that he would fulfil his terms as per the said agreement obtained a consent deed, dated 09.01.2012 from the plaintiff to sell 1/3rd share of Ramesh in the property pertaining to the sale agreement dated 24.12.2009 to the defendant. Then the defendant without the knowledge of the plaintiff obtained sale deed from Ashok and S.Venkatachalam in his name and Rajendran under the Registered sale deed, dated 09.02.2012.

3. After coming to know about the sale in the name of the defendant by cheating the plaintiff without giving any share to him in the property pertaining to the sale agreement, dated 24.12.2009, the

plaintiff demanded to pay his amount Rs.30,00,000/-. In spite of repeated demands, the defendant has not chosen to pay either the principal amount or the interest. The plaintiff lodged a complaint with the DIG, Salem Range on 18.03.2013 and the matter was referred to DCB and the defendant agreed to pay Rs.30,00,000/- within six months; but he has not paid the same. Therefore, the plaintiff again lodged a complaint with DIG, Salem Range on 16.12.2013. In the meanwhile the defendant sent a notice dated 21.07.2013 to the plaintiff with false allegations. The police also advised the plaintiff to approach the Civil Court. Therefore the plaintiff has filed the present suit.

4. The appellant / defendant in his written statement averred that the plaintiff and the defendant entered into a sale agreement with B.Ashok, S.Venkatachalam and R.Ramesh on 24.12.2009 to purchase the property measuring 87 cents in S.No.92/2 of Periyaseerakapadi village by paying Rs.30,00,000/- by the plaintiff and Rs.35,00,000/- by the defendant as sale advance. On 23.11.2011 the plaintiff and defendant entered into an agreement wherein Raji and Mani were inducted as working partners and they agreed to receive interest according to their investment and that they have to get sale deed to such portion of the said property as per the ratio of investment and

that if the property was not sold out they have to partition the suit property according to their investment.

5. As per the said agreement the plaintiff executed a consent deed, dated 09.01.2012 giving consent to Ramesh to sell his 1/3rd share in the property to the defendant by stating specifically that he and the defendant settled their accounts. Accordingly the defendant purchased another 1/3rd share in the property from R.Ramesh under the sale deed, dated 09.01.2012. Further the defendant and one K.Rajendran purchased half share each in the remaining portion of the said property from P.Ashok and S.Venkatachalam under the order of the plaintiff under the registered sale deed, dated 09.02.2012. In the said transaction, the plaintiff and the defendant have got their property according to their investment and no one is liable to pay any amount to another. In order to get wrongful gain, the plaintiff lodged a complaint with the DIG, Salem. The police threatened the defendant and forcibly obtained his signature in the blank paper. Hence, he sent legal notice to the plaintiff on 21.07.2013. Due to the influence of the plaintiff, the police fabricated the blank signed paper of the defendant as a bound over letter as if the defendant agreed to pay Rs.30,00,000/- with interest within six months along with Mani and Raji. It is false to allege that the plaintiff, the defendant, one Raji and one Mani were jointly

doing real estate business from 2007. The allegations made in the complaint contra to the above facts are denied.

6. The trial Court framed necessary issues. On the side of the plaintiff, three witnesses were examined and 7 Exhibits marked. On the side of the defendant, two witnesses were examined and 4 Exhibits marked. The learned trial Judge after analysing both oral and documentary evidence of both sides decreed the suit as prayed for. Aggrieved by the same, the defendant has preferred this Appeal Suit.

7. The learned counsel appearing for the appellant / defendant argued that the suit for recovery of money is not maintainable and the plaintiff should have filed suit for specific performance as per the agreement, dated 29.12.2009 against the persons who failed to perform their obligation. It is contended that only as per the direction of the plaintiff, Rajendran purchased half share of the remaining property as per the sale agreement, dated 24.12.2009 and therefore the appellant / defendant is not liable to pay any amount to the plaintiff as the account has already been settled. It is also contended that as per the agreement, dated 23.11.2011, two working partners were inducted and the suit is also not maintainable.

8. The learned counsel appearing for the respondent argued that the property was jointly agreed to be purchased by the plaintiff and the defendant and there is no registered partnership firm; relationship of partnership firm was not in existence. It is contended that there is absolutely no evidence for settling the account and payment to the plaintiff. The trial Court after carefully analysing the evidence has rightly decreed the suit and the same does not warrant any interference.

9. The learned counsel appearing for the appellant cited the Division Bench Judgment of this Court in **M.Jayapal v. M.N. Sampath & others** reported in **2013-1-LW 623** and argued that the defendant agreed to purchase the property to run real estate business as partners and therefore suit for dissolution of partnership ought to have been filed. In the above decision the Division Bench found that the suit property in question were not joint property purchased for the purpose of exploiting them as partnership properties and therefore the relief of dissolution of the partnership firm under Section 69 (3) of the Partnership Act does not arise.

10. In this case on hand in paragraph 10 of the written statement, the defendant denied the averment in the plaint that the

defendant, Raji and one Mani were jointly doing real estate business from 2007 as false. The unregistered sale agreement, dated 24.12.2009 which is the basis for the case is marked as Ex.A.7. As per this agreement, the plaintiff and defendant entered into an agreement with the property owners for the purchase of the property and there is no mention that the plaintiff and defendant has agreed to purchase the same for the partnership firm. The agreement entered into between the plaintiff and the defendant on 23.11.2011 is marked as Ex.A.1. In this the investment made by the plaintiff and the defendant and the terms as to how the profit and loss in the property are to be apportioned have been mentioned. Two working partners were also inducted. But except the investment there is absolutely no evidence that partnership relationship continued afterwards. In the absence of any relationship of conducting business as partnership firm and in the absence of recitals in the sale agreement as well as the other agreement between the plaintiff and the defendant to denote that the property intended to be purchased were properties for the partnership firm, the theory of partnership firm is not acceptable and therefore the contention of the appellant is sans any merit.

11. The specific case of the plaintiff is that he and the defendant invested Rs.30,00,000/- and Rs.35,00,000/- to purchase

the property under the sale agreement dated 24.12.2009 and though the defendant agreed to repay the invested amount or to execute the sale deed for a portion of the property proportionate to the investment, he has not done so and he deceitfully agreed to get the sale deed executed in his favour with respect to the entire property.

12. The consistent case of the appellant / defendant is that as per the agreement entered into between the plaintiff and the defendant the account was already settled and only as per the direction of the plaintiff the remaining property after purchase a portion by the defendant was conveyed to defendant and Rajendran and there is no due to the plaintiff. Ex.A.7 dated 24.12.2009 is the agreement of sale entered into by the plaintiff and the defendant with the land owners. As per this sale agreement, sale price was fixed at Rs.1,40,000/- per cent and Rs.65,00,000/- was paid as advance. Subsequently, on 23.11.2011 an agreement was executed between the plaintiff and defendant and the same is marked as Ex.A.1. There is no dispute with respect to the above documents.

13. The recital in Ex.A.1 depicts that the plaintiff and defendant paid Rs.30,00,000/- and Rs.35,00,000/- totalling Rs.65,00,000/- to the owners of the property as advance under the

above mentioned sale agreement. Further terms in the agreement is that plaintiff and defendant are entitled to get the sale deed executed proportionate to their investment. The consent deed executed by the plaintiff, dated 09.01.2012 is marked as Ex.B.1. Through this document the plaintiff consented for execution of the sale deed with respect to 1/3rd portion of the property to the defendant by Ramesh. The above document does not disclose about the settlement of account between the plaintiff and the defendant. It says that among the plaintiff and defendant income and expenses was accounted for and therefore he consented for execution of sale deed by Ramesh in favour of defendant of his 1/3rd share. The above recital does not lead to infer that the entire amount due to the plaintiff was paid and settled.

14. The contention of the appellant / defendant is that only under order of the plaintiff, the remaining portion of the property was conveyed in favour of Rajendran and defendant. There is no iota of evidence to show that under the direction of the plaintiff, sale deed in favour of Rajendran and defendant was executed. It is pertinent to note that Rajendran has not been examined on the side of the defendant to put forth the above case of the defendant and there is also absolutely no evidence as to the repayment of Rs.30,00,000/- to the plaintiff. Though the defendant examined as D.W.1 says in his

cross-examination that the plaintiff directly sold to Rajendran proportionate to his investment but Rajendran was not examined. It is also pertinent to see that though the sale agreement was entered into fixing the sale price at Rs.1,64,000/- per cent, the sale deed executed in favour of the defendant under Ex.B.2, dated 09.01.2012 and under Ex.B.4, dated 09.02.2012 in favour of the defendant and Rajendran are for meagre amounts, viz., Rs.33,500/- and Rs.67,000/-.

15. Though there is admission with respect to the dues to the plaintiff under Ex.A.6, the defendant disputes the same as fabricated in the police station by getting his signature in the blank paper. Barring the above document, the above mentioned other documents are suffice to establish that the defendant owed to the plaintiff Rs.30,00,000/- and the same was not repaid.

16. In this case, the plaintiff and the defendant jointly entered into a sale agreement with the property owners and defendant got the sale deed executed in his favour and one Rajendran. The plaintiff filed the suit for recovery of the amount from the other agreement holder without raising any dispute with the owners that too based on a subsequent agreement dated 23.11.2011 entered into between them. Under the above circumstances the defendant is not

correct to say that the plaintiff ought to have filed suit for specific performance. It is not a dispute between the agreement holder and the owners and it is a dispute between the agreement holders themselves. The interest claimed is also reasonable and the trial Court has rightly decreed the suit and the same does not warrant any interference by this Court and accordingly, the Appeal Suit is liable to be dismissed.

17. In the result, the Appeal Suit is dismissed with costs, confirming the Judgment and Decree, dated 25.01.2017 made in O.S.No.243 of 2014 on the file of the III Additional District Court, Salem. Consequently, connected miscellaneous petitions are closed.

**(A.S.,J.) (P.K.,J)**
**24-11-2017**

Index :Yes

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