

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 04.04.2017

Orders delivered on 13.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE M.S.RAMESH

A.S.No.148 of 2014

V.Morichetti,
S/o.P.V.N.Varadarajan ...Appellant/Defendant

Vs.

V.M.N.Charitable Trust
by its President Valliyammal,
Door No.191/71 B, Mungapadi Street,
Gugai, Salem Town. ...Respondent/Plaintiff

Prayer:- Appeal Suit has been filed under Section 96 of C.P.C.,
against the judgment and decree dated 30.07.2012 made in
O.S.No.47 of 2011 on the file of the Principal District Judge,
Namakkal.

For Appellant : Mr.T.Dhanyakumar
For Respondents: Mr.P.Mathivanan

JUDGMENT

(Judgment of the Court was delivered by R.Subbiah, J.)

This appeal has been filed against the judgment and
decree dated 30.07.2012 in O.S.No.47 of 2011 passed by the
learned Principal District Judge, Namakkal, decreeing the suit
filed by the respondent herein for recession of contract dated
30.12.2009 entered into between the respondent and the appellant
herein registered as Doc.No.6373/2009 before the Sub-Registrar
Office at Rasipuram.

2.The appellant herein is the defendant and the respondent
herein is the plaintiff before the Trial Court. For easy
reference, hereinafter the parties are referred to as per their
rankings in the suit.

3.The facts and circumstances which gave rise to the present appeal are as follows:

3-1.The plaintiff is a charitable Trust by name V.M.N. Charitable Trust and it is a public Trust registered on 21.08.1998. The suit schedule property is situated in Kattanachampatti Village in S.No.77/3B, T.S.No.1/1B, 1/2B, 1/3, Ward-A, Block-1 at Rasipuram Town. The Plaintiff Trust had got the suit property by way of a Settlement Deed dated 18.11.1999. From the date of the said Settlement, the suit property was in possession and enjoyment of the plaintiff-Trust. In the Trust, there are three Trustees. As per Class S & K of the Trust Deed, Trust can sell the properties of the Trust, if the Trustees unanimously resolved to sell the property for the benefit of the Trust. At the time of forming the Trust, one E.Nagachandran was the President and R.P.OmIyyappa Eswara was the Secretary and one E.Manikandan was the Treasurer. The said E.Nagachandran had resigned from Presidentship/Trusteeship on 11.11.2006 and on his resignation, one R.Valliyammal was appointed as President and Trustee.

3-2.It is stated that in order to fulfil the object of the Trust and also to settle the debts of the Trust as well as for the improvement of the Trust, the Trustees wanted to sell the suit schedule property. In this regard, an unanimous resolution was also passed on 10.10.2009 and as per the said resolution, it was decided to sell the suit schedule property to the defendant. Hence, for this purpose, an agreement of sale was entered into between the plaintiff and the defendant on 30.12.2009. As per the said Sale Agreement, sale price was fixed as Rs.15 lakhs and time for performance of the contract was fixed as 11 months. On the date of agreement, towards advance amount, the defendant issued a cheque to the plaintiff for a sum of Rs.1 lakh bearing Cheque No.413055 drawn on Canara Bank, Salem; however, the defendant requested the plaintiff not to present the cheque for collection as there was no sufficient funds in his bank account. Pursuant to his request, the said cheque was not presented for collection by the plaintiff. The 11 months' time fixed for performance of the sale agreement expired on 30.11.2010. But, the defendant has not come forward to pay the sale consideration to get the sale deed executed in his favour within the time fixed under the sale agreement. Hence, the plaintiff issued a legal notice on 01.12.2010 and the same was received by the defendant on 03.12.2010. But, the defendant did not send any reply. Since the defendant has not paid the amount as agreed by the defendant under the sale agreement dated 30.12.2009, the sale agreement is not supported by any consideration. Hence, the Trustees of the plaintiff Trust on 14.03.2011 approached the defendant and requested him to execute a cancellation deed cancelling the sale agreement dated 30.12.2009. But, the defendant refused to execute the

cancellation deed. Therefore, left with no other alternative, the plaintiff has filed the suit for recession of the sale agreement/contract dated 30.12.2009 entered into between the plaintiff and the defendant.

4.Before the Trial court, resisting the case of the plaintiff, the defendant filed a written statement contending that it is true that there was a sale agreement entered into between the plaintiff and the defendant on 30.11.2009; pursuant to the said sale agreement, the defendant had issued a cheque for a sum of Rs.1 lakh, bearing Cheque No.413055 drawn on Canara Bank, Salem, towards advance amount. Since the plaintiff insisted to pay the said amount in cash, the defendant paid the said amount in cash on the date of agreement itself, that is the reason why the plaintiff did not deposit the said cheque for collection. In fact, even prior to entering into the said sale agreement, the plaintiff Trust and the defendant had entered into a partnership deed on 27.11.2009, for forming a layout in the suit schedule property; as per the said partnership deed, the property has to be divided into housing plots by the defendant for the purpose of selling the same and in the sale proceeds, the plaintiff is entitled to 45% and the defendant is entitled to 55%. According to the defendant, the sale agreement is only a part of the document of the partnership deed. The defendant has spent more than Rs.10 lakhs on the suit property for forming layout. But, suppressing all these facts, the plaintiff has filed the suit. The defendant is ready and willing to pay the balance sale consideration of Rs.14 lakhs to get the sale deed executed in his favour. Thus, the defendant sought for dismissal of the suit.

5.On the above pleadings, the Trial Court has framed the following issues

(1)Whether the plaintiff is entitled to recession of the sale agreement dt 30.12.2009 between the plaintiff and defendant?

(2)Whether there is partnership agreement between the plaintiff and defendant as alleged in the written statement?

(3)To what relief if any the plaintiff is entitled to?

6.Before the Trial Court, on the side of the plaintiffs, the President of the Trust examined himself as P.W.1 besides examining one Subbukrishnan as P.W.2 and seven documents were marked as Ex.A.1 to Ex.A.7. On the side of the appellant/defendant, the defendant examined himself as D.W.1 besides examining one V.Kumar and O.Chezhiyan as D.W.2 & D.W.3

and marked five documents as Ex.B.1 to Ex.B.5. Before the Trial Court, an Advocate Commissioner was appointed and his report and plan were marked as Ex.C.1 & Ex.C.2.

7.After considering the evidence both oral and documentary adduced on either sides, the Trial Court has decreed the suit in favour of the plaintiff on a reasoning that within the agreed period, the defendant was not ready and willing to get the sale deed executed in his favour by paying the balance sale consideration. Agreed over the same, the defendant has preferred the present appeal.

8.Assailing the reason assigned by the Trial Court for decreeing the suit, the learned counsel appearing for the appellant/defendant submitted that prior to the execution of the sale agreement between the plaintiff and the defendant, a partnership agreement was entered into between the plaintiff and the defendant on 27.11.2009 for forming a layout in the suit schedule property; as per the said partnership deed, the property has to be divided into housing plots by the defendant for the purpose of selling the same and in the sale proceeds, the plaintiff is entitled to 45% and the defendant is entitled to 55%. Further, as per the said partnership agreement, the possession was handed over to the defendant. The defendant by spending a huge amount of Rs.10 lakhs has formed the layout and divided the property into plots and named the same as Ganesh Garden. These facts were spoken to by the defendant in his evidence as D.W.1. In the cross-examination of D.W.1, no favourable reply in support of the case of the plaintiff was elicited. Further, the learned counsel for the appellant/defendant submitted that on the date of agreement, the defendant had issued a cheque for a sum of Rs.1 lakh and agreed to pay the balance amount of Rs.14 lakhs within a period of 11 months. This fact was also spoken to by the defendant in the cross-examination. But, without considering all these facts, the Trial Court has come to the conclusion that the defendant has not come forward to get the sale deed executed in his favour within the period of six months as fixed under the sale agreement; and thus the trial Court has erroneously decreed the suit. Hence, the learned counsel for the appellant/defendant sought for setting aside the judgment of the Trial Court.

9.Per contra, the learned counsel appearing for the respondent/plaintiff submitted that the defendant has not paid a single pie as agreed upon by him under the sale agreement dated 30.12.2009; therefore, the said agreement was not supported by any consideration. Though the defendant has issued a cheque for a sum of Rs.1 lakh on the date of sale agreement, subsequently, he requested the plaintiff not to deposit the said cheque stating that there was no sufficient funds in his bank account.

Accordingly, the plaintiff-Trust did not deposit the said cheque. Thereafter, the defendant has not paid any amount. Therefore, it is incorrect to state that the defendant has paid a sum of Rs.1 lakh in cash. Further, the learned counsel for the respondent/plaintiff would submit that it is false to state that the defendant had spent a huge amount for forming layout by dividing the property into several plots. In fact, the Court below has appointed an Advocate Commissioner, who inspected the property and filed a report long with a plan, which were marked as Ex.C.1 & Ex.C.2. Based on the said documents (Ex.C.1 & Ex.C.2), the Trial Court has come to the conclusion that the property has not been divided into plots, thus, rejected the case of the defendant. Therefore, no infirmity could be found in the reasons assigned by the Trial Court for decreeing the suit. Thus, the learned counsel for the respondent/plaintiff sought for dismissal of the appeal.

10.Keeping the submissions made on either side, We have carefully perused the materials available on record. We find that absolutely no tangible evidence was produced on the side of the defendant to show that he has paid a sum of Rs.1 lakh as advance amount towards sale consideration. In fact, the Trial Court has come to the conclusion that had the advance amount of Rs.1,00,000/- been paid by the defendant, an endorsement to that effect would have been made on the said agreement dated 30.12.2009; but, no such endorsement was made on the said agreement. Thus, the trial Court has rejected the case of the defendant. We do not find any infirmity in the said finding of the trial Court.

11.It is yet another submission of the learned counsel for the appellant/defendant that prior to the sale agreement, there was a partnership agreement between the plaintiff and the defendant; that as per the said partnership agreement, the defendant has to divide the property into plots and sell them and in the sale proceeds, the plaintiff is entitled to 45% and the defendant is entitled to 55%. According to the learned counsel for the defendant, the defendant by spending huge sum of Rs.10 lakhs, has formed a layout by dividing the property into plots and named it as Ganesh Garden. In view of the said defence taken by the defendant, the Trial Court had appointed an Advocate Commissioner, who inspected the property and filed a report along with a plan (Ex.C.1 & Ex.C.2). On perusal of the report and plane of the Advocate Commissioner, the Trial Court has come to the conclusion that the property has not been divided into plots as contended by the defendant by spending huge sum of Rs.10 lakhs and that the defendant has come forward with a false averment; thus, the Trial Court by rejecting the case of the defendant, has decreed the suit in favour of the plaintiff. Absolutely We do not find any infirmity in the said

findings of the Trial Court. In the absence of any evidence to show that based on the sale agreement dated 30.12.2009, the defendant has paid a sum of Rs.1 lakh as advance as well as in the absence of any proof to show that the defendant has divided the property into several plots, We do not find any infirmity in the findings rendered by the Trial Court that the defendant was not ready and willing to get the sale deed executed in his favour by paying the balance sale consideration within the period of 11 months as prescribed under the Sale Agreement. We do not find any valid reason to make an interference with the judgment of the Trial Court.

In fine, the appeal fails and the same is dismissed. No Costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssv

To,

The Principal District Judge,
Namakkal.

+ 1 cc to Mr.T. Dhanyakumar, Advocate sR.22714

A.S.No.148 of 2014

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