

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.927 of 2010

V.Panneer Selvam
Prop. M/s.Chennai Engineers

... Appellant/Plaintiff

Vs

S.Chandrasekaran

... Respondent/Defendant

This appeal is filed under Section 96 C.P.C. against the judgement and decree dated 26.03.2010 made in O.S.No.9369 of 2006, on the file of the II Additional City Civil Court, Chennai.

For Appellant : Mr.V.Manohar

For Respondent : Mr.J.Thilagaraj

J U D G E M E N T

The plaintiff in O.S.No.9369 of 2006 is the appellant. The said suit was filed for recovery of a sum of Rs.7,06,567.26 along with interest at 24% per annum on Rs.3,51,526/- due under the sale agreement and construction agreement and for costs. According to the plaintiff, the father of the plaintiff one T.S.Velu was the owner of 2000sq.ft. of land with an access through a 10 feet wide a common passage. In order to promote the said land into a multistoried residential apartment complex, the plaintiff who is the qualified promoter was entrusted with the job. The defendant was interested purchasing the residential apartment measuring about 920sq.ft. in the first floor of the said proposed residential apartment complex and has purchased a undivided 375 sq.ft. of land. A sale agreement was entered into on 15.5.2002 between the defendant and the owner of the land namely the father of the plaintiff T.S.Velu represented by his wife V.Meenatchi, as the Power Agent for sale of 375sq.ft. of undivided share in land. On the same day i.e. on 15.5.2002 the defendant entered into a construction agreement with the plaintiff for construction of residential apartment in the first floor, according to the specification set out in the said

agreement. It was agreed that the total cost of the apartment would be Rs.9,20,000/- at Rs.1000 per sq.ft. which included the value of the undivided share of the land.

2. The sale deed was executed in favour of the defendant on 22.08.2002 with reference to 375sq.ft. of undivided share in the land. The construction was almost completed and possession of the apartment was handed over to the defendant on 12.09.2002. The plaintiff would claim that the defendant has required the plaintiff, to do certain additional works and agreed to pay the cost of the said works also.

3. According to the plaintiff, the defendant had did not come forward to pay the balance as per the agreement and therefore, he issued a notice on 09.04.2003 to the defendant claiming that the sum of Rs.1,42,576/- was due and payable to him under the construction agreement dated 15.05.2002. The said notice dated 09.04.2003 was replied by the defendant under Ex.B2 dated 14.5.2003, wherein the defendant denied the claim of the plaintiff and claimed that there is only a sum of Rs.15,000/- due and payable that would be paid immediately after the remaining works are completed by the plaintiff. The plaintiff would further contend that on 10.04.2003 he issued a demand notice claiming that a sum of Rs.3,51,526/- due and payable by the defendant. The said demand notice dated 10.04.2003 was accompanied by a final bill which shows the amount payable by the defendant.

4. It is the case of the plaintiff that he has obtained a completion certificate on 03.07.2003. Since the defendant did not come forward to pay the balance amount the plaintiff has come forward for the present suit claiming a sum of Rs.3,51,526/- along with interest at 24% per annum from the period of 12.09.2002 till the date of the filing of the suit i.e. 7.12.2006.

5. The defendant resisted the suit contending that the suit is barred by limitation. Apart from the plea of the limitation the defendant has also contended that the claim of the plaintiff is false. It is also contended that there was only a balance of Rs.15,000/- out of the total amount payable by the defendant under the agreement and that was not paid since the plaintiff did not complete the work as promised by him.

6. The defendant has also disclosed the amount paid by him in paragraph 12 of the written statement. It is the claim that the defendant has paid a sum of Rs.8,65,000/- and had purchased materials value of Rs.40,075/- and therefore in all an amount of Rs.9,05,075/- has been paid by the defendant and the balance is only Rs.15,000/-. Despite the fact that the entire amount was

paid leaving a balance of only Rs.15,000/-, the plaintiff has not chosen to complete the remaining works. On the above pleadings the defendant has sought for dismissal of the suit.

7. On the above pleadings, the learned Trial Judge, framed the following issues:

- 1) Whether the suit is barred by limitation?
- 2) Whether the plaintiff is not entitled to the suit claim, since he has not completed the construction as per the agreement?
- 3) Whether there is no cause of action for the suit?
- 4) To what other reliefs, the plaintiff is entitled to?

8. On the side of the plaintiff, he has examined himself as PW1 and his father T.S.Velu was examined as PW2 and Ex.A1 to Ex.A15 were marked. On the side of the defendant, the defendant examined himself as DW1 and Ex.B1 to Ex.B5 were marked.

9. The learned Trial Judge considering the evidence found that the claim of Rs.3,51,526/- has not been established. Though, the plaintiff claimed the said sum under Section Ex.A4 notice dated 10.4.2003 which was accompanied by a final bill and a statement of work done, there is no proof of service of the said notice on the defendant. On the other hand, the defendant has produced Ex.B1 and Ex.B2, dated 09.04.2003 and a reply to the said notice dated 14.5.2003. Considering the said facts the learned trial Judge came to the conclusion that the plaintiff has not establish that the defendant is liable to pay a sum of Rs.3,51,526/-. The Trial court also concluded that the suit is barred by limitation. On the above findings the trial court dismissed the suit.

10. Aggrieved by the dismissal of the suit, the present appeal has been filed by the plaintiff.

11. I have heard Mr.V.Manohar, learned counsel appearing for the appellant and Mr.J.Thilaga Rao, learned counsel appearing for the respondent.

12. Mr. V. Manohar, learned counsel appearing for the appellant would contend that the conclusion of the trial court that the suit is barred by limitation is incorrect. According to the learned counsel the agreement being one for construction the cause of action to sue upon it would arise only on the completion of the agreement. He would rely upon the contention of the defendant that the works remained incomplete even at the time of filing of the suit and contend that the suit is therefore within the time.

13. Per contra Mr.J.Thilaga Rao, learned counsel for the respondent would contend that under Article 18 of Limitation Act, the suit for the price for work done by the plaintiff at his request should be filed within three years and starting point of limitation "when the work is done". According to the learned counsel even in the notice dated 9.4.2003 and the letters dated 9.4.2003 and 10.4.2003 the plaintiff had claimed that the work has been completed and the said claim of the plaintiff has been strenuously denied of the defendant in the reply dated 14.05.2003 which has been received by the plaintiff on 20.05.2003. Therefore, according to the learned counsel for the respondent, the limitation at best would start on 20.05.2003. Therefore, the suit filed on 07.12.2006, nearly after three years and six months is barred by limitation.

14. Mr. Manohar, would however, rely upon the statement made in the letter written by the defendant on 14.10.2006, wherein he had stated that there was an agreement reached at the police station for determination of the amount after completion of the work done. Taking me through the contents of Ex.A9 dated 14.10.2006 wherein the defendant has stated as follows:-

" ,jw;fpilapy; kPz;Lk; 01/05/2006 md;W tpy;ypthf;fk; fhty; epiyaj;jpy; itj;J kPz;Lk; xU cld;gof;if ek;kpilna fhty; mjpgfhpf; Kd;dpiyapy; ghf;fp ntiyfs; Kiwahf j';fshy; bra;ag;gl;lgpwF. ehd; juntz;oa ghf;fp gzk; vt;tst[vd;giJ Kot[bra;J. vd;dhy; jug;glntz;Lk; vd;Wk; Kot[bra;ag;gl;lJ/"

15. Mr. Manohar, learned counsel appearing for the appellant would contend that the defendant himself has admitted that the amount would be decided only after completion of entire work on 14.10.2006 the amount due is not determined. I am unable to countenance the said submission of the learned counsel because the very letter dated 14.10.2006 the defendant at paragraph 21 as stated as follows:

"Vw;bfdnt Fwpg;gl;lJnghy ehd; juntz;oa ghf;fpj; bjhif U:/15.000-- kl;Lnk vd;giJ cWjp bra;fpnwd;/"

16. Therefore, there was no admission of liability in Ex.A9 and the claim that there was a fresh agreement on 01.5.2006 cannot be countenanced. At best the cause of action for the suit had arisen on 20.05.2003, when the plaintiff was made known of the denial of the claim of the plaintiff by the defendant. The trial court has also found that though the plaintiff has produced Ex.A4 dated 10.04.2003 making a claim of Rs.3,51,526/- against the defendant, there is no proof of service on said letter dated 10.04.2003 on the defendant. On the other hand, Ex.B1 dated 9.4.2003 has been produced by the defendant wherein the plaintiff has claimed only a sum of Rs.1,42,576/- as balance.

17. The learned trial Judge has found that Ex.A4 has been concocted by the plaintiff to bloat the claim in accordance with his convenience. According to the learned counsel Mr.J.Thilaga Rao, appearing for the respondent the learned trial judge after considering the entire records and evidence concluded that the plaintiff's claim is not proved and any event is barred by limitation.

18. On the above arguments, following points arise for determination in the appeal:

1. Whether the conclusion of the trial court that the suit is barred by limitation can be sustained?
2. Whether the claim of the plaintiff that a sum of Rs.3,51,526/- is due and payable by the defendant towards the construction agreement dated 15.5.2002 has been proved in accordance with law?

Point No.1:-

19. Admittedly the construction agreement entered on 15.5.2002, the construction was completed and the defendant was put in possession of the property on 12.09.2002. The plaintiff made a demand for sum of Rs.1,42,576/- on 09.04.2003 and the said demand was refuted by the defendant under Ex.B2, dated 14.05.2003, which was received by the plaintiff on 20.05.2003. Therefore, the cause of action for the suit under Article 18 had arisen on 09.04.2003 when the plaintiff claimed that he has completed the work. The letter said to have been written by the plaintiff on 10.4.2003 it more revealing Where the document said to be a final bill is attached to the said letter. Under Article 18 limitation for recovery of the price of work done commences from the date of the completion of the work. The plaintiff himself has claimed that the work was completed on 9.4.2003 or at best on 10.4.2003. Therefore the suit filed on 7.12.2006 is barred by limitation. In order to get over the difficulty Mr.Manohar contend that the paragraph 23 of the letter dated 14.10.2006 marked as Ex.A9 will give a fresh cause of action. The said paragraph 23 is extracted above and paragraph 21 of the Ex.A9 is also extracted, the reading of both would show that the said contents of the para 23 cannot be treated as admission of liability by the defendant in order to bring the suit within a limitation. Therefore, the trial court was right in concluding that the suit is barred by limitation.

Point No.2:-

20. Even on the merits of the claim, I do not think, the plaintiff can succeed. He was not consistent the case. Under Ex.B1 dated 9.4.2003 he has made demand for a sum of Rs.1,42,576/- and said demand is not supported by the any document. However, the said demand has been categorically rejected by the defendant by his letter dated 20.05.2003. The

plaintiff had produced the Ex.A4 dated 10.04.2003 in which claim is increased to Rs.3,51,526/- from Rs.1,42,576/- within a day. Though, the Ex.A4 is accompanied by the statement called as a final bill, there is no proof that Ex.A4 was served on the defendant. In the absence of any proof regarding service of the demand under the Ex.A4 the plaintiff is not entitled to the suit claim. Therefore, I do not see any reason to interfere with the Judgment and decree of the trial court. Appeal is dismissed, confirming the Judgment and decree of the trial court. No order as to costs in the appeal.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

jv/av

To

1.The II Additional City Civil Court,
Chennai.

2.The Section Officer,
V.R.Section,
High Court, Chennai.

+2cc's to Mr.J.Thilagaraj, Advocate, S.R.No.49063
+1cc to Mr.V.Manohar, Advocate, S.R.No.49215

A.S.No.927 of 2010

CNR(CO)
CA(11/08/2017)

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