

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2017

CORAM

THE HON'BLE MR.JUSTICE P.KALAIYARASAN

C.S.Nos.637 of 2010

C.Elumalai

.. Plaintiff

vs

1. Sri Lakshmi Prapanna Ramanuja Das Trust
Rep. by its Sole Trustee
Sri Ramprappanna Achari,
No.31, M.M.Koil Street,
Sriperumbudur,
Sriperumbudur Taluk,
Kancheepuram District.

2. K.Ravichandran

3. C.S.Sanker

4. R.Kalyan Kishan Singh

5. J.Nargunanathan

.. Defendants

Civil Suit filed under Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 of CPC read with O.S.Rules, seeking for a judgment and decree, directing the defendants 1 to 5 jointly and severally to pay the plaintiff a sum of Rs.66,50,000/- together with future interest at 36% p.a. on Rs.50,00,000/- from the date of plaint till date of realization and for costs.

For Plaintiff : Mr.R.Thiagarajan

For Defendants : Mr.R.Rajamani for D1
No Appearance for D2, D3 and D5

D4 - Set Exparte

JUDGMENT

This suit has been filed seeking to direct the defendants 1 to 5 jointly and severally to pay the plaintiff a sum of Rs.66,50,000/- together with future interest at 36% p.a., on Rs.50,00,000/- from the date of plaint till the date of realization with costs.

2. The plaint averments are as follows :

(i) The plaintiff is running an Educational Trust and Educational Institutions under the name and style of "Sri Ramjayam Educational Trust". He is also a leading Road contractor and also in property development. The first defendant is a Trust represented by its sole trustee. On enquiry, the first defendant informed the plaintiff that it had authorised defendants 2 to 4 as their authorised agents to fix a prospective purchaser for sale of the property said to have been belonged to the first defendant. The plaintiff and the defendants 1 to 5 on discussion and negotiation with regard to the terms and conditions of sales and agreed to purchase the said property for a consideration of Rs.15 crores. The plaintiff paid a sum of Rs.5 lakhs by way of cheque as token advance and pursuant to that, the defendants agreed to entrust all the relevant documents pertaining to the property and also the suit papers in O.S.No.185 of 1989 and connected records.

(ii) The first defendant acting through the defendants 2 to 4 received the payment of Rs.5 lakhs on 22.11.2007 and executed a Memorandum of Understanding at Ashok Nagar, which was duly witnessed by the fifth defendant. The plaintiff also made further payment of Rs.5 lakhs as cash on 22.07.2007 and defendants 2 and 3 executed a receipt for the same. Subsequently, a further payment of Rs.10 lakhs was made to the fifth defendant, who had acknowledged the same on behalf of the first defendant. Besides that a sum of Rs.5 lakhs by way of cheque, dated 05.05.2009 was paid to the fifth defendant. In all, a sum of Rs.25 lakhs was paid by cash and by cheques.

(iii) As per the Memorandum of Understanding, defendants 1 to 5 were unable to make out a clear marketable title and convey the property to the plaintiff. The fifth defendant acting on his behalf as well as on behalf of other defendants agreed to rescind the contract and also refund the money with compensation and accordingly, a sum of Rs.50 lakhs was arrived at. The fifth defendant entered into a Paraspara Purinthunarvu Oppantham and issued three cheques. When the same were presented they were returned by the Bank with an endorsement "Insufficient fund". Since the defendants

agreed to pay a sum of Rs.50 lakhs on 15.07.2009, the plaintiff is claiming interest from that date at the rate of 36%. Therefore, the suit has been filed.

3. The contentions in the written statement filed by the first defendant are as follows :

(i) The first defendant does not know the defendants 2 to 4, their identity and their personality. He has had no occasion to contact them for selling the properties. The Trust is also not in necessity for selling the property and the Trust is run in sound financial position very well. The first defendant had not received any payments in respect of the suit property from the plaintiff.

(ii) The defendants 2 to 5 are not the recognized agents of the first defendant so as to mulct the liability on the first defendant. The first defendant has not entered into any agreement much less the Memorandum of Understanding, dated 22.07.2011. The first defendant has no connection with regard to the alleged payment and alleged Paraspara Purinthunarvu Oppantham and he is not signatory to the same.

(iii) It is a clear case of fraud played by the defendants 2 to 5 as admitted by the plaintiff himself and the plaintiff has to workout his remedy against 2 to 5 only. There is no cause of action against the first defendant and therefore, the suit is liable to be dismissed.

4. The contentions in the written statement filed by the defendants 2 and 3 are as follows :

(i) The first defendant owns immovable property at Sriperumbudur village and Civil Suits are also pending with respect to those properties. The first defendant authorises the defendants 2 to 4 in procuring prospective purchasers in purchasing the immovable properties belonging to the first defendant. Pursuant to the authorisation, defendants 2 to 4 acted as Mediators with regard to the land transaction. Defendants 2 and 3 received only a sum of Rs.5 lakhs from the plaintiff to meet out the expenses incurred by the first defendant to get over the pending litigation.

(ii) The sale consideration was never fixed as alleged in the plaint. Excepting Rs.5 lakhs by virtue of Memorandum of Understanding, dated 22.11.2007, no amount was received by defendants 2 and 3. Defendants 2 and 3 were not aware of the

payment being made by the plaintiff to the fifth defendant. They are also not aware of the Paraspara Purinthunarvu Oppandham executed between the plaintiff and the fifth defendant. They are also not aware of the issuance of the cheque by the fifth defendant. The defendants 2 and 3 are not at all liable for payment of any amount much less the suit claim.

5. The contentions in the written statement filed by the fifth defendant are as follows :

(i) The first defendant is the owner of the suit property. The fifth defendant is not having any power to deal with the property agreed to be sold to the plaintiff. The fifth defendant did not enter into the agreement with the plaintiff in respect of the sale of the property of the first defendant. The defendants 3 and 4 obtained a letter of authorisation from the first defendant to procure the prospective purchaser in respect of the property of the first defendant. The litigation is pending in respect of the said property.

(ii) The plaintiff approached fifth defendant and requested him to introduce the defendants 3 and 4 expressing his inclination to purchase the property of the first defendant with the litigations. The plaintiff agreed to meet all the expenses to get over the litigations

pending in the respective courts of law. The plaintiff having realised that the litigations will not end soon, did not want to proceed with his purchase. He wanted to wriggle out of the transaction.

(iii) The plaintiff paid the amount only towards the litigation expenses and for removal of encroachments and no amount was paid to the fifth defendant. The allegation that the fifth defendant agreed to hand over all the relevant documents is false and incorrect. The fifth defendant did not act as intermediary between the vendor and purchaser and he only helped the plaintiff at his request in respect of sorting out the legal problems. He did not sign the Memorandum of Understanding.

(iv) The plaintiff threatened and took a cheque for Rs.50 lakhs from the fifth defendant stating that Rs.25 lakhs towards interest and Rs.25 lakhs towards principal. The fifth defendant did not execute any agreement titled as Paraspara Purinthunarvu Oppandham. The plaintiff forged the signature of the fifth defendant and fraudulently created a Memorandum of Understanding, dated 15.04.2009, as if the fifth defendant agreed to repay the sum of Rs.50 lakhs. There was no consideration for the said cheques, as the same have been taken by the plaintiff under threat and coercion.

There is no cause of action and therefore, the suit is to be dismissed as against the fifth defendant.

6. On perusal of the pleadings of the parties, the following issues have been framed for trial :

" 1. Whether the first defendant or his authorised representatives viz., defendants 2 to 5 had entered into an agreement of sale and received any advance amount in respect of the suit property belonging to the first defendant ?

2. Whether the defendants 2 to 4 have acted only to mediate with parties on behalf of the first defendant and received the amount from the plaintiff ?

3. Whether the fifth defendant had acted and received the alleged sum of Rs.25,00,000/- (Rupees twenty five lakhs only) from the plaintiff ?

4. Whether the 5th defendant has entered into a memorandum of undertaking for repayment of Rs.50,00,000/- (Rupees Fifty lakhs only) on behalf of the fifth defendant and other defendants and issued cheques ?

5. Whether the plaintiff is entitled to recover a sum of Rs,60,50,000/- (Rupees sixty

lakhs and fifty thousand only) with interest from the defendants 1 to 5 jointly and severally?

6. To what relief the parties are entitled?"

The plaintiff has been examined as P.W.1 and Exs.P.1 to P.12 were marked on his side. The first defendant was examined as D.W.1 and Exs.D.1 to D3 were marked.

7. Issue Nos. 1 and 2 :

There is no dispute that the suit property belongs to the first defendant. The consistent case of the plaintiff is that the plaintiff entered into an agreement on 22.11.2007 with the defendants 2 to 4 who were the authorised agents of D1 for the purchase of the suit property and gave a token advance of Rs.5 lakhs. It is his further case that he subsequently paid through D2 to D5, Rs.20 lakhs and in total Rs.25 lakhs was paid. Agreeing to pay the said amount and also compensation, D5 is said to have entered into a Memorandum of Understanding on 15.04.2009 and therefore, the plaintiff claims the amount from the defendants. The case of the first defendant is that the first defendant had no connection with D2 to D5 and he never authorised any one as agent much less D2 to D4 and the alleged authorisation letter is a forged one.

8. Though D2 and D3 filed their written statement, no

arguments was advanced on their side. However, they contend that D2 and D3 received only Rs.5 lakhs towards litigation expenses and they were not aware about the other payments. Though D5 also filed his written statement, argument has not been advanced. His contention is that the amounts were received from the plaintiff towards litigation and for removal of encroachments and the cheques were received from him by the plaintiff by threat and coercion. It is further contended that he did not execute any agreement, dated 15.04.2009 and the same is forged one. The fourth defendant remained exparte.

9. The entire claim is based on Ex.P.2, Memorandum of Understanding, dated 22.11.2007. This Ex.P.2 is stated to have been entered into between the plaintiff and the defendants 2 and 3. In this Memorandum of Understanding, D2 and D3 signed as authorised representatives of the first defendant Trust. Ex.P.1 is the alleged authorisation letter. The first defendant in his written statement categorically denies issuance of any such authorisation letter to defendants 2 and 3.

10. The sole Trustee of the first defendant Trust Ramprappanna

Achari has been examined as D.W.1. He has also deposed in his evidence that the Trust did not authorise D2 to D4 to negotiate on their behalf for the sale of the property. He further says that the signature found in Ex.P.1 is not that of his. Thus, when the genuineness of Ex.P.1 has been disputed by the author, it is for the plaintiff to prove its genuineness and execution. But the plaintiff has not established that Ex.P.1 is the authorisation letter executed by the first defendant in favour of D2 to D4.

11. Even if the Memorandum of Understanding, dated 22.11.2007 (Ex.P.2) is taken to have been executed by the authorised representatives of D1, the recitals of the same are not helpful to the plaintiff so as to bind D1. As per Ex.P.2, D2 and D3 agreed to make necessary arrangements to purchase the property, only for that they received Rs.5 lakhs as a token advance. Even if Ex.P.1 is assumed to be true for a moment, para 3 authorises D2 to D4 to recognise a potential purchaser for the property and fix the price in accordance with the confirmation of D1. Therefore, even if Ex.P.1 is assumed to be true one, D2 and D3 have been authorised only to identify the purchaser and they have no right to enter into any sale agreement or any transaction including taking advance. Therefore, this Court holds that defendants 2 to 5 are not authorised

representatives of the first defendant and the Memorandum of Understanding, dated 22.11.2007 is not binding on the first defendant.

12. D2 and D3 in their written statement admit that they received Rs.5 lakhs from the plaintiff. Their contention is that they received the sum only towards litigation expenses and to remove the encroachment with respect to the suit property belonging to the first defendant. This Court has already held that authorisation letter said to have been given by the first defendant has not been proved. Therefore, the contention of the defendants 2 and 3 that the amount was received with respect to the suit property is not acceptable.

13. Ex.P.2 is the Memorandum of Understanding, dated 22.11.2007. The plaintiff, who was examined as P.W.1 has deposed that the same was entered into between himself and the defendants 2 and 3. In this Ex.P.2, there is recital for the receipt of Rs.5 lakhs by the defendants 2 and 3 from the plaintiff as a token advance for making necessary arrangement to purchase. It is also pertinent to note that there is no recital that the amount was received either towards litigation expenses or for removal of encroachments. On the same day for the receipt of the said amount, the defendants 2 and 3

also issued a receipt, which is also marked as Ex.P.3. Hence, the defendants 2 and 3 having signed in Ex.P.2 and Ex.P.4 and received the amount of Rs.5 lakhs on the premise that they had some authority as authorised representative of D1, they are bound to repay the said amount to the plaintiff.

14. For the aforesaid reasons, the defendants 2 to 4 have not acted as authorised representatives of the first defendant, however, they are liable to pay a sum of Rs.5 lakhs to the plaintiff with 9% interest from the date of plaint till the date of realisation.

15. Issue Nos.3 and 4 :

Ex.P.5 is the Memorandum of Understanding alleged to have been executed by D5 in favour of the plaintiff. The plaintiff examined as P.W.1 has deposed that the same was executed by D5. Though the fifth defendant pleaded that the said agreement is forged one, he has not even stepped into the box to say so. The evidence of P.W.1 with respect to the execution of the said agreement could not be shaltered in any way during cross-examination made by D5. In the said agreement, excepting Rs.5 lakhs received by D2 and D3, remaining Rs.20 lakhs have been admitted to have been received by D5. Out of the said Rs.20 lakhs, for receipt of Rs.10 lakhs, Ex.P.4, dated 12.08.2008 has also been filed. As per Ex.P.5, agreement, D5

admits the receipt of Rs.20 lakhs from the plaintiff and also agrees to pay Rs.25 lakhs towards compensation to the plaintiff. The original agreement has been marked as Ex.P.5. Ex.P.5 contains three pages, but in first two pages only signature of the fifth defendant is found, whereas in the third page, it is blank. The agreement has not been signed by the other party, namely, plaintiff and also the witness. Therefore, with respect to compensation of Rs.25 lakhs, the said agreement cannot be taken as gospel truth, that too in the absence of any admission or evidence on the side of the fifth defendant. In the pleadings he also admits the issuance of cheque for Rs.50 lakhs. But his contention is that the cheque was obtained from him by the plaintiff by threat and coercion. When the fifth defendant admits the issuance of cheques and pleads threat and coercion, it is for him to establish that the cheques were obtained only by threat and coercion. But there is no piece of evidence forthcoming from the side of the fifth defendant as to the plea of threat and coercion. Taking all the above facts, evidence of D.W.1 and Ex.P.4, this Court holds that fifth defendant is liable to pay Rs.20 lakhs with interest.

16. The plaintiff claims 36% of interest from the date of Memorandum of Understanding, dated 15.07.2009. As already pointed out, the agreement is found to be incomplete. The claim of interest from the date of Memorandum of Understanding cannot be

ordered. Therefore, the plaintiff is entitled to the interest only from the date of plaint at the rate of 9% p.a.

17. Issue No.5 :

The plaintiff is entitled to recover a sum of Rs.5 lakhs from the second and third defendants and Rs.20 lakhs from the fifth defendant with 9% interest from the date of plaint till the date of realization.

In fine, this Civil Suit is partly allowed with costs, whereby the plaintiff is entitled to recover a sum of Rs.5 lakhs from the second and third defendants and Rs.20 lakhs from the fifth defendant with 9% interest from the date of plaint till the date of realization. The suit against the first and fourth defendants are dismissed.

07.04.2017

Speaking order
Index : Yes / No
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P.KALAIYARASAN, J

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**Pre-Delivery Judgment in
C.S.No.637 of 2010**

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