IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :09.03.2017
PRONOUNCED ON :05.04.2017

CORAM

THE HON`BLE MR.JUSTICE T.RAVINDRAN

C.S.No.283 of 2013

1.V.Anandhi
2.A.Sakunthala .. Plaintiffs

vs.

Raj Kumar Shaw .. Defendant

Civil Suit filed under Order IV Rule 1 of Original Side Rules 1956 read with Order VII Rule 1 CPC praying for the following judgment and decree against the defendant for the following reliefs:

a) to direct the defendant to pay the plaintiffs a sum of Rs.33,21,250/- with interest at the rate of 24% per annum from the date of the plaint till date of realization on the suit amount of Rs.33,21,250/-

b) and costs of the suit;

For Plaintiffs :Mr.K.R.Krishnan

For defendant :Mr.Ravichandran Sundaresan

J U D G M E N T

Suit for recovery of money.

2.The averrments contained in the plaint are briefly stated as follows:

The plaintiffs have been allotted 4/7th share inclusive of their sister Saroja and their deceased sister Vijayalakshmi's shares in the measurement of 1339 sq feet in the property bearing Door No.11, Begum Sahib 4th street, Border Thottam, Chennai-600 002, by virtue of preliminary decree in O.S No. 3466 of 2000 and in the final decree in I.A.No.113 of 2005 on the file of the City Civil Court, Chennai. An agreement of sale was entered into between the defendant and the plaintiffs and the other above mentioned two sharers to sell their 4/7th undivided share in the above mentioned property on 16.11.2011 for a consideration of Rs.1,00,42,500/- and the defendant paid a sum of Rs.10,00,000/- as advance sale consideration on various conditions. Despite the same, the defendant came forward with a request to execute and register the sale deed in his favour and accordingly the sale deed dated 12.12.2011 was executed for a sum of Rs.24,00,000/- and the defendant had undervalued the property to escape from payment of huge stamp duty. For the above said sale deed dated 12.12.2011, the payments were made by the defendant to the plaintiffs and the other two sharers as Rs.10,00,000/- as advance paid on 16.11.2011 and Rs.24,00,000/- on the date of the execution and the registration of the sale deed. The defendant promised the plaintiffs and their sisters to pay the balance sale consideration of Rs.62,42,500/- to them when the other three sharers sell their shares to the defendant and the vacant site is handed over to the defendant. The defendant had also made a request to the plaintiffs to arrange for the purchase of the shares of the other three sharers namely the plaintiffs' mother, brother Deenadayalan and the another sister Vasanthi. At that point of time, the defendant also promised to pay the balance sale consideration and also to pay the arrears of mesne profits of Rs.39,41,000/- due and payable to the plaintiffs and their sisters by their brother Deenadayalan as per the orders passed in the final decree application in I.A.No.156 of 2011. Believing the words of the defendant, the plaintiffs helped the defendant to get the sale of the shares of the other three sharers also. However, the defendant did not pay the balance sale consideration as promised by him and hence the plaintiffs issued a registered notice dated 12.12.2011, calling upon the defendant to pay the balance sale consideration due to the plaintiffs and their other 2 sisters as per the agreement dated 16.11.2011 and also to pay the mesne profits as promised by the defendant. The defendant cunningly without the knowledge of plaintiffs had obtained the sale deed from the other three sharers on 30.03.2012 and failed to settle the balance sale consideration in favour of the plaintiffs as per the sale agreement dated 16.11.2011. The defendant has collusively grabbed the property of the plaintiffs without properly settling the amount due and payable to them. In as much as the defendant has failed to pay the amount to the plaintiffs and on the other hand, as the defendant took steps to demolish the existing building in the property and attempt to put up a new construction, the suit in OS No.2579 of 2012 has been laid by the plaintiffs against the defendant for permanent injunction. The said suit is still pending. The defendant is liable to pay the suit amount to the plaintiffs as per the sale agreement dated 16.11.2011. The other sisters of the plaintiffs did not join with them in filing the present suit against the defendant. Hence, the suit for recovery of money by the plaintiffs.

3.The averrments contained in the written statement filed by the defendant are briefly as follows:

The suit is not maintainable either in law or in facts. The plaintiffs are estopped from filing the present suit and the present suit is barred under order II, Rule 2 of the Code of Civil Procedure. On the same cause of action, the plaintiffs have filed a suit in O.S.No.2579 of 2012 on the file of the City Civil Court, Chennai for permanent injunction. The suit is bad for non joinder of the necessary parties. The defendant has purchased the front portion of the property from the plaintiffs and the other sharers for a sum of Rs.24,00,000/- under the sale deed dated 12.12.2011 and the defendant has paid the entire sale consideration under the sale deed. By an another sale deed dated 30.03.2012, the defendant has also purchased the rear portion of the property for a consideration of Rs.21,00,000/- from the other three sharers and also paid the entire sale consideration thereunder. The present suit has been laid by the plaintiff to grab money from the defendant on a false ground. The defendant denies that there had been an agreement of sale between the plaintiffs and their other two sisters and the defendant in respect of the purchase of the property for a sum of Rs.1,00,42,500/- on various conditions. The said agreement of sale is a forged one and fabricated by the plaintiffs to grab money from the defendant. It is also false to state that under the said sale agreement, the defendant paid a sum of

Rs.10,00,000/- as advance sale consideration and after the execution of the sale deed dated 12.12.2011, the defendant promised the plaintiffs to pay the balance sale consideration of Rs.66,42,500/-. The allegation that the defendant has made a request to the plaintiffs to arrange for the purchase of the shares of the remaining sharers in the property is false. It is false to state that the defendant promised to pay the mesne profits payable to the plaintiffs by their brother Dheenadayalan as per the orders in the final decree application in I.A.No.156 of 2011. The plaintiffs have executed a sale deed in his favour in respect of their shares for a sum of Rs.24,00,000/- and it is false to state that the defendant has suppressed the actual value of the plaintiffs' share in the sale deed. It is false to state that the plaintiffs and their other two sisters are entitled to recover a sum of Rs.66,42,500/- from the defendant as per the sale agreement dated 16.11.2011. It is false to state that the defendant has under valued the property and cheated the Government. The plaintiffs have laid the present suit by abusing the process of law and the suit laid by the plaintiffs is without any cause of action. Hence the suit is liable to be dismissed.

4.On the basis of the above pleadings, the following issues were framed for determination:

(a)Whether the copy of the sale agreement dated 16.11.2011 produced by the plaintiffs is forgery and fabricated?

(b)Whether the defendant has paid the entire sale consideration to the plaintiffs?

(c)Whether the sale deed dated 12.12.2011 in favour of the defendant for meager valuation of Rs.24 lakhs had been registered by suppressing the actual value of the sale consideration of Rs.1,00,42,500/-?

(d)Whether the suit is hit under Order II, Rule 2 of the Civil Procedure Code, as the plaintiff already filed a suit in O.S.No.2579 of 2011, on the file of the II Assistant City Civil Judge at Chennai on the very same cause of action, restraining the defendants from demolishing the existing building or constructing the new building which was sold by the plaintiffs to defendant?

(e)Whether the plaintiffs have received the entire sale consideration and executed the sale deed in favour of the defendant and handed over possession of the property with all the title deeds to the defendant?

(f)Whether there was an existence of an agreement of sale dated 16.11.2011 between the plaintiffs' other two sharers(Saroja and the legal heirs of the deceased sister Vijayalakshmi) and the defendant to sell their 4/7th undivided share in the property measuring 1339 sq.ft of Door No.11, Begum Sahib 4th Street, Border Thottam, Chennai -600 002 for a sale consideration of Rs.1,00,42,500/-?

5.In support of the plaintiffs case, PW1 and 2 were examined and Exs.P1 to P15 have been marked. On the side of the defendant, DW1 has been examined and Exs.D1 to D5 were marked.

6. **Issue Nos. 1 to 3, 5 & 6**.

The suit has been laid by the plaintiffs for recovery of a sum of Rs.33,21,250/- which according to the plaintiffs represents the unpaid sale consideration in respect of the sale agreement dated 16.11.2011. According to the plaintiffs, in respect of their shares and the shares of their other two sisters namely Saroja and Vijayalakshmi, an agreement of sale dated 16.11.2011 was entered into between the plaintiffs and their above mentioned two sisters and the defendant for a sale consideration of Rs.1,00,42,500/- and pursuant to the said sale agreement, the defendant paid a sum of Rs.10,00,000/- as advance and agreed to purchase their shares on certain conditions as stipulated in the sale agreement. Now, according to the plaintiffs, in as much as the defendant has failed to pay the balance sale consideration as promised by him under the sale agreement dated 16.11.2011, they had been necessitated to lay the suit against the defendant for recovery of the amount, to which they are entitled to. It is the case of the plaintiffs that their two sisters have not joined them in the institution of the present suit against the defendant.

7.The defendant in his written statement has vehemently denied the genuineness of the sale agreement dated 16.11.2011. According to the defendant, the sale agreement dated 16.11.2011 projected by the plaintiffs is a fabricated document concocted by the plaintiffs for the purpose of this case, in order to extract money unlawfully from the defendant.

8.In the light of the above defence set out by the defendant, it is evident that the onus is upon the plaintiffs to establish that the sale agreement dated 16.11.2011 is a genuine document and under the same, the defendant agreed to purchase the share of the plaintiffs and the shares of the other two sisters of the plaintiffs for a sum of Rs.1,00,42,500/-.

9.As seen from the pleadings set out by the respective parties and also the evidence adduced in the matter, it is found that admittedly the plaintiffs and their other two sisters had sold their 4/7th share in the property concerned, to the defendant by virtue of the Sale Deed dated 12.12.2011 for a sum of Rs.24,00,000/-. It could therefore be seen that even as per the admitted case of the plaintiffs that they and their other two sisters had conveyed their shares to the defendant under the sale deed dated 12.12.2011. It is found that the sale deed dated 12.12.2011 has come into existence after the alleged agreement of sale projected by the plaintiffs dated 16.11.2011.

10.Now according to the plaintiffs, on the date of the execution of the sale deed dated 12.12.2011, the sale consideration recited therein had been paid by the defendant. It is further case of the plaintiffs that for the said sale, the defendant has also adjusted a sum of Rs.10,00,000/- being the advance amount paid by him pursuant to the sale agreement dated 16.11.2011. However, the same has been stoutly denied by the defendant. A perusal of a copy of the sale deed dated 12.12.2011 marked as Ex.P7 would go to show that under the same, the defendant has paid the entire sale consideration recited therein to the plaintiffs and their two sisters amounting to Rs.24,00,000/- and accordingly it is noted that the vendors had conveyed the shares legally in favour of the defendant under the said document. If really the agreement of sale dated 16.11.2011 has any connection or nexus with Ex.P7, sale deed dated 12.12.2011, as rightly put forth by the defendant's counsel, some reference about the same would have been incorporated in Ex.P7. However, as rightly contended by the defendant's counsel nothing has been referred to about the sale agreement dated 16.11.2011 in Ex.P7. Therefore, the case of the plaintiffs that following the agreement of sale dated 16.11.2011, they had on 12.12.2011 conveyed their shares to the defendant under Ex.P7, as such, cannot be accepted. On the other hand, it is found that as put forth by the defendant, Ex.P7 is an individual transaction and accordingly under the same, the plaintiffs and their other two sisters had conveyed their 4/7th share in the property concerned to the defendant for a sum of Rs.24,00,000/-, after receiving the said sale consideration from the defendant. Accordingly, it is noted that there is no mentioning of the sale agreement dated 16.11.2011 in Ex.P7. Therefore, the case of the plaintiffs that the advance amount of Rs.10,00,000/- said to have been paid by the defendant pursuant to the sale agreement dated 16.11.2011 also formed part of the sale consideration under Ex.P7, as such, cannot be accepted in any manner. If that be so, as rightly contended necessary recitals to that effect would have been incorporated in Ex.P7.

11.It is the case of the plaintiffs that the defendant had requested the plaintiffs to help him to get the shares of the remaining sharers in the property concerned and it is stated by the plaintiffs that they had helped the defendant, with reference to the same. However, no evidence has been placed by the plaintiffs, in support of their case. On the other hand, it is noted that the defendant had also purchased the shares of the remaining sharers in the property concerned under the sale deed dated 30.03.2012 and the purchase of the remaining shares from the other sharers by the defendant has not been controverted by the plaintiffs. It could therefore be seen that the defendant has purchased the entire property concerned from all the sharers. There is no material placed by the plaintiffs to show that they had in any manner contributed their help to the defendant in obtaining the sale deed dated 30.03.2012 from the other sharers.

12.According to the plaintiffs, the defendant agreed to pay the balance sale consideration under the sale agreement dated 16.11.2011, after purchasing the remaining shares of the property concerned. Further, according to the plaintiffs, inasmuch as the defendant failed to keep up his promise after purchasing the entire property, they had been necessitated to lay the suit against the defendant.

13.At the foremost, if really an agreement of sale dated 16.11.2011 has been entered into between the defendant and the plaintiffs and their other two sisters in respect of 4/7th share in the property concerned, as rightly contended, the other two sisters of the plaintiffs would have joined them in laying the present lis against the defendant. The other two sisters have admittedly not joined with the plaintiffs in the institution of the present suit. The plaintiffs have also not cared to examine the other two sisters or their legal representatives for supporting their claim. No reason has been adduced by the plaintiffs for not examining their sisters in support of their case.

14.As adverted to earlier, admittedly the plaintiffs and their other two sisters without any protest had conveyed their shares in the property concerned to the defendant under Ex.A7. Accordingly, it is noted that inasmuch as there had been no sale agreement between them and the defendant as projected by the plaintiffs on 16.11.2011, it could be seen that no reference of the sale agreement had been incorporated in Ex.A7 and their other two sisters have also not joined with the plaintiffs in laying the present suit against the defendant.

15.As adverted to earlier, when even according to the plaintiffs it is only their brother who is liable to pay the mesne profits of Rs.39,41,000/- to them, their case that the defendant had assured them to pay the said amount on behalf of their brother is farfetched and unacceptable. Even with reference to the above case of the plaintiffs, there is no acceptable material forthcoming on the part of the plaintiffs.

16.The plaintiffs have in their pleadings set out that the defendant has undervalued the value of the property purchased under Ex.P7. However, with reference to the same, no material is forthcoming on behalf of the plaintiffs. In such view of the matter, when the case of the plaintiffs with reference to the same is not fortified by acceptable or reliable material and when it is found that the defendant had properly valued the property purchased under Ex.P7 and also paid the consideration due to the plaintiffs and the other two sisters, it is found that the defendant had purchased the property under Ex.P7 for a proper and valuable consideration.

17.As adverted to supra, the defendant had also purchased the remaining shares from the other owners. Even with reference to the same, it is noted that the defendant had properly valued the shares concerned and accordingly paid the due consideration to the vendors thereunder. Accordingly, it is found that the other two sisters and also the vendors of the sale deed dated 30.03.2012 have not joined with the plaintiffs in the present action instituted by them against the defendant.

18.It is contended by the plaintiffs that some complaint had been lodged by them against the defendant for undervaluing the property and for cheating them. As to what concrete action had been taken with reference to those complaints etc are not established by the plaintiffs properly. Accordingly, it is found that inasmuch as the defendant has not committed any criminal acts as such with reference to the same as put forth by the plaintiffs it could be seen that the plaintiffs are unable to place any material to establish that any tenable action had been taken against the defendant with reference to the same.

19.The plaintiffs have examined one of the attestors to the sale agreement dated 16.11.2011 as PW2. However, it is found that the evidence of PW2 is unacceptable and it has not helped the plaintiffs case. In this connection, PW2, Yuvaraj even during the chief examination has admitted except introducing the defendant to his Advocate and signing as a witness in the sale agreement dated 16.11.2011, he is not aware of the dealings between the parties concerned. It could be seen that as such PW2 is not aware of any transaction pertaining to the sale agreement dated 16.11.2011. That apart, PW2 during the cross examination has admitted that he is not aware of any transaction between the plaintiffs and defendant and does not know who are the other witness to the sale agreement other than him and do not know how many vendors are there and do not know the extent of the plaintiffs share acquired by them through the partition and do not know who was the scribe of the sale agreement. According to him, he had signed the agreement as he was asked to sign as a witness. From the above evidence of PW2, it could be seen that other than subscribing his signature to the so called agreement dated 16.11.2011 he is not aware of any other dealings between the plaintiffs and the defendant. With reference to the same, such being the position, it could be seen that the evidence of PW2 is far from satisfactory and cannot be relied upon to sustain the plaintiffs case.

20.As rightly contended by the defendant's counsel, if the plaintiffs case has any element of truth and if really the sale agreement dated 16.11.2011 had come into existence, without the payment of the balance sale consideration as now claimed by the plaintiffs, the plaintiffs would not have ventured to execute the sale deed in favour of the defendant under Ex.P7 conveying their shares in favour of the plaintiffs. As rightly contended, it is not the case of plaintiffs that they had been cheated by the defendant in getting the sale deed, Ex.P7 from them in respect of their shares in the property concerned. On the other hand, it has been admitted by the plaintiffs themselves that they had in fact executed the sale deed in favour of the defendant marked as Ex.P7 conveying their shares in the property concerned. If really, the sale deed marked as Ex.P7 had been obtained by the defendant in a fraudulent manner suppressing the sale agreement dated 16.11.2011, one way or the other, as rightly contended, the plaintiffs would have endeavoured to set aside the sale deed marked as Ex.P7 in the manner known to law. However, till date, the plaintiffs have not taken any steps challenging Ex.P7 sale deed.

21.When according to the defendant, the sale agreement dated 16.11.2011 is a fabricated document and created by the plaintiffs for the purpose of this case, it could be seen that the defendant would not be in the custody of the original of the same. However, it is the contention of the plaintiffs that the defendant is having the original of the said agreement and inasmuch despite notice to produce the same, the defendant has not produced the same, they had been necessitated to mark the copy of the same as Ex.P15, therefore, according to the plaintiffs, the copy of the sale agreement dated 16.11.2011 is Ex.P15. The plaintiffs have not placed any material to show that such an agreement had been entered into between the plaintiffs and the defendant.

22.As adverted supra, with reference to the above case of the plaintiffs, the evidence of PW2 does not advance their case. Left with no other alternative, it is contended by the plaintiffs' counsel that Court should compare the signature and the stamp papers of Ex.P15 and the signature and the stamp papers of the documents marked as Ex.D1 and D2. Ex.D1 is the sale deed dated 12.12.2011 and Ex.D2 is the sale deed dated 30.03.2012.

23.However, as rightly contended by the defendant's counsel that on the basis of comparison of the signatures and the stamp papers of the above said three documents, it cannot be construed and held that Ex.P15, sale agreement is a genuine document. It is for the plaintiffs to establish by adducing acceptable and reliable evidence that such an agreement had been actually entered into between them and the defendant. When with reference to the same no iota of evidence is projected by the plaintiffs, the expectation of the plaintiffs that the Court should compare the above mentioned three documents and help the plaintiffs in securing the amount from the defendant as such cannot be accepted in any manner.

24.As seen above, inasmuch as the plaintiffs have failed to establish that an agreement of sale dated 16.11.2011 had been entered into between them and their other two sisters on one part and the defendant on the other part, it could be seen that the other two sisters have not joined with the plaintiffs. Even otherwise, it is not the case of the plaintiffs that their other two sisters are inimically disposed of towards them. In such view of the matter, at least in support of their case, the plaintiffs should have endeavored to examine their other two sisters to hold that the sale agreement dated 16.11.2011 had been actually entered into between them and the defendant. But the plaintiffs for the reasons best known to them have also not examined their other sisters.

25.In the light of the above discussions, it is held that the plaintiffs have miserably failed to establish that the agreement of sale dated 16.11.2011 is a true and genuine document. It is further held that as putforth by the defendant that the sale agreement dated 16.11.2011 is a forged and fabricated document. It is further held that the plaintiffs have received the entire sale consideration from the defendant and executed the sale deed marked as Ex.P7 in favour of the defendant and also handed over the property with all the title deeds to the defendant. Thus, it is held that the defendant has paid the entire sale consideration to the plaintiffs and not liable to pay the suit amount to the plaintiffs as claimed by the plaintiffs.

26.It is also held that no agreement of sale dated 16.11.2011 was entered into between the plaintiffs and the other two sharers i.e., Saroja and the legal heirs of the deceased sister Vijayalakshmi, with reference to their $4/7^{th}$ undivided share in the property concerned for a sale consideration of Rs.1,00,42,500/-.

27.Further, it is held that the plaintiffs have failed to establish that the defendant has under valued the property in Ex.P7, by suppressing the actual value of the sale consideration of Rs.1,00,42,500/- Accordingly, the issue Nos.1 to 3, 5 and 6 are answered.

28. **Issue No.4** :

It is found that on the basis of the sale agreement dated 16.11.2011, according to the plaintiffs, inasmuch as the defendant attempted to put up a new construction in the property concerned, the suit in O.S No.2579 of 2011 had been instituted by the plaintiffs on the file of the City Civil Court, Chennai against the defendant for the relief of permanent injunction.

29. Now according to the defendant, when at that point of time, the plaintiffs also had the cause of action for seeking the relief sought for in the present suit and in such view of the matter, according to defendant, when the plaintiffs have failed to include the whole of the claim in the said suit or obtain the leave of the Court to sue for the present relief subsequently, according

to the defendant, the present suit laid by the plaintiffs is hit by Order II, Rule 2 of the Code of Civil Procedure.

30. As put forth by the defendant, it is found that on the date of laying of the suit in O.S.No.2579 of 2011, the plaintiffs had the cause of action for seeking the reliefs now claimed in the present suit as the suit in OS No.2579 of 2011 is also based upon the sale agreement dated 16.11.2011 and the present suit is also laid based upon the sale agreement dated 16.11.2011. In such view of the matter, when it is found that the plaintiffs had the cause of action for claiming the reliefs in the present suit at the time of laying O.S.No.2579 of 2011, as rightly argued by the defendant's counsel, the plaintiffs, if they had decided not to include the whole of the claim which could be made by them in that suit, ought to have sought the leave of the Court to claim the reliefs sought for in the present suit subsequently and having failed to obtain the leave of the Court, it could be seen that as per Order II, Rule 2 and 3, the plaintiffs would be debarred from

laying the present suit thereafter, on the basis of the same cause of action. Even if it is found that the plaintiffs could not have laid the present suit in the City Civil Court, Chennai, having found that the plaintiffs had the cause of action to claim the reliefs sought for in the present suit, at that point of time at least the plaintiff should have obtained the leave of the Court to seek the reliefs now sought for subsequently. Having omitted to obtain the leave of the Court at that point of time, it could be seen that the plaintiffs shall not afterwards have the legal entitlement to lay a separate suit for claiming the present reliefs.

31.In such view of the matter, as rightly putforth by the defendant's counsel inasmuch as the plaintiffs had the cause of action for seeking the present reliefs sought for when the suit in O.S.No.2579 of 2011 was preferred at least should have obtain the leave of the Court to sue the same subsequently and having failed to obtain the leave of the Court, it is found that the present suit laid by the plaintiffs is hit by Order II, Rule 2 of Civil

Procedure Code. Accordingly, issue No.4 is answered.

32.In support of the plaintiffs' case, the learned counsel for the plaintiffs relied upon the decisions reported in ***2007(59) AIC 597(N.S.Prakash Rao Vs. Bala Krishna), 2010(3) CCC 531(Mangat Ram Vs. Ashok Kumar Sharma)***. In support of the defendant's case, the learned counsel for the defendant relied upon the decision reported in ***2008(1) CTC page 97(J.Naval Kishore Vs. D.Swarna Bhadran)***. The principles of law adumbrated in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case.

33.In conclusion, the suit laid by the plaintiffs is dismissed with costs.

05.04.2017

Index : Yes/No
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