

In the High Court of Judicature at Madras

Dated : 27.06.2018

Coram

The Honourable Mr.Justice R.SUBBIAH
and
The Hon'ble Mr.Justice C.SARAVANAN

A.S.No.497 of 2017
and
CMP.No.15749 of 2017

1. K.Palanisamy
2. P.Kumaresan
3. P.Sundareshwaran ... Appellants/Defendants

..vs..

S.Devaraj ... Respondent/Plaintiff

Appeal Suit has been filed under Order 41, Rule 1 of the Civil Procedure Code against the judgment and decree dated 11.01.2017 passed by the learned I Additional District Judge, Erode in O.S.No.210 of 2013.

For Appellants : Mr.B.Kumarasamy

For Respondent : Mr.A.K.Kumarasamy,
Senior counsel for
Mr.S.Kaithamalaikumaran

JUDGMENT

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

The appellants herein are the defendants in O.S.No.210 of 2013, on the file of the learned I Additional District Judge, Erode.

2. The respondent herein has filed the aforesaid suit against the appellants/defendants for the following reliefs:

(a) directing the defendants to pay a sum of Rs.17,70,000.00 (Rupees Seventeen Lakhs and Seventy Thousand only) with subsequent interest at the rate of 18% per annum for Rs.15,00,000/- from the date of suit till the date of realization of the amount.

(b) creating a charge over the suit property for due repayment of the amount.

(c) directing the defendant to pay the costs of the suit to the plaintiff.

3. The brief facts of the case is as follows:

i) The 1st defendant is the father of 2nd and 3rd defendants. The suit property originally belongs to Karuppana Gounder, purchased in the year 1996. Karuppana Gounder is the father of the 1st defendant. On the death of Karuppana Gounder, the defendants 1 to 3 succeeded to the suit property and they have been in possession and enjoyment of the same. The defendants agreed to sell the suit property to the plaintiff for a sum of Rs.20,00,000/- per acre and the plaintiff also agreed for the same and paid a sum of Rs.15,00,000/- to the defendants on 31.08.2012 as an advance and part of sale consideration. They received the said amount and entered into an agreement of sale in writing on the same day. The plaintiff agreed to pay the balance of sale consideration to the defendants on or before 13.02.2013 and on such payment, the defendants should execute the sale deed. It is further agreed between the defendants and the plaintiff that the suit property should be measured with the help of surveyor in order to arrive at a total extent of the property. The defendants failed to co-operate to measure the suit property and failed to furnish relevant documents viz., death certificate and legal heir certificate of the deceased Karuppana Gounder etc. The plaintiff was always ready and willing to perform his part of contract from the date of agreement but the defendants evaded to perform their part of the contract. Hence, the plaintiff demanded to repay the advance amount of Rs.15,00,000/- with interest at the rate of 18% per annum. But the defendants evaded to repay the same. Hence, the suit has been filed seeking the above said reliefs.

ii) The defendants resisted the suit stating that the plaintiff did not fulfill the obligations as per the terms and conditions of the agreement. The plaintiff was not ready and willing to perform his part of the contract. Therefore, the plaintiff is the defaulter and hence, he lost his advance amount and thus, he is not entitled for any refund.

4. When the matter is taken up for consideration, learned counsel for the appellant submitted that the 1st appellant is ready and willing to pay the advance amount paid by the respondent herein provided the respondent should co-operate to sell the suit land to the third parties. He has filed an Affidavit of Undertaking of Palanisamy, viz., first appellant herein. Learned counsel for the respondent also agreed for the same. The relevant portion in paragraph Nos. 6 & 7 of the said undertaking affidavit reads as follows:

"6. I state that the Learned Trial Judge by his Judgment and decree dated

11.01.2017 made in O.S.No.210/2013 on the file of the 1st Additional District Judge, Erode, decreed the suit, directing me to pay the advance amount along with 18% interest and created a charge over the suit property.

7. I state that aggrieved over the said perverse Judgement and Decree, we filed an Appeal Suit in A.S.No.497 f 2017 before this Hon'ble Court. I state that I am ready and willing to pay the advance amount paid by the respondent herein provided the respondent to co-operates to sell the suit land to the third parties. I will take sincere steps to sell the suit land to the 3rd parties within a period of six months from to-day. Further, I am seeking some concession in respect of rate of interest. The transactions between myself and the respondent is only for agricultural purpose and the interest fixed by the Trial Court of 18% is highly excess.

Therefore I humbly pray that this Hon'ble Court may be pleased to accept the Undertaking Affidavit and pass suitable order and thus render justice."

5. The above said undertaking given by the first appellant is hereby recorded. Accordingly, the Appeal is partly allowed. The appellants are directed to pay the advance amount to the respondent along with 12% interest from the date of the suit till the date of payment, within a period of six months from today. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS VII)

//True copy//

Sub Assistant Registrar

vsi

To

The I Additional District Judge,
Erode

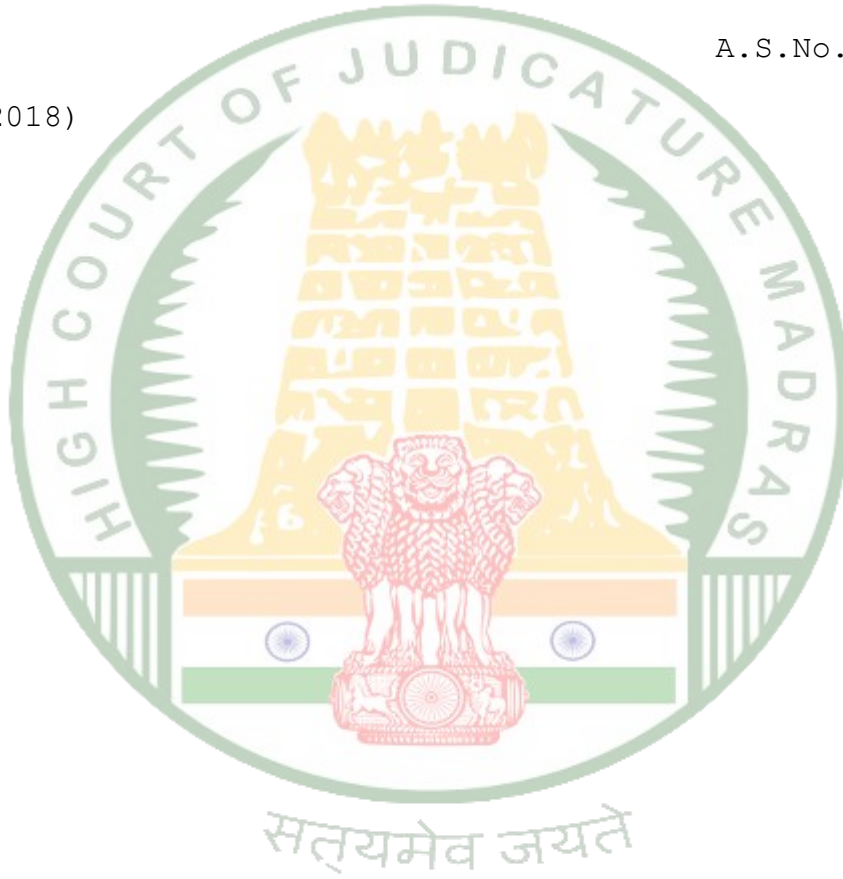
Copy TO

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate SR.No.40688
+1cc to Mr.B.Kumarasamy, Advocate SR.No.41184

A.S.No.497 of 2017

RJ(CO)
GN(07/08/2018)



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