

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2018

C O R A M

THE HONOURABLE MR.JUSTICE P.D. AUDIKESAVALU

C.S. No. 927 of 2016

P. Hanumantha Rao ... Plaintiff

Vs.

T.R. Dinakaran ... Defendant

Plaint filed under Order IV Rule 1 of Madras High Court Original Side Rules read with Order VII Rule 1 of C.P.C. Madras High Court Original Side Rules praying to pass a decree and judgment:-

- (i) Directing the Defendant to pay the due sum of Rs.25,70,400/- together with future interest at the rate of 12% per annum on the due sum of Rs.18,90,000/- from the date of this Plaint till the date of realization.
- (ii) Directing the Defendant to pay the cost of this suit.

For Plaintiff : Mr. S. Janarthanan

For Defendant : No Appearance

J U D G M E N T

The case of the Plaintiff is as follows:-

- (i) The Plaintiff who was the owner of the land admeasuring an extent of 2850 sq. ft., had executed an power of attorney in favour of the Defendant on 20.08.2010, which has been registered as Document No. 696 of 2010 in the Office of the Sub-Registrar, Kodambakkam, Chennai, in

respect of certain lands belonging to him in Irungatukottai, Sriperumbudur Taluk, Kancheepuram District, authorizing him to sell the same.

(ii) It has been specifically stated that in clause 11 of that Power of Attorney that no consideration has been received to execute the same and in clause 12 that the Defendant shall maintain true and proper accounts of the transaction, to be submitted to the Plaintiff.

(iii) After obtaining the encumbrance certificate of his property, the Plaintiff learnt that the Defendant by exercising the power conferred by the power of attorney, had executed a sale deed dated 26.08.2010 in favour of one S. Prabhu for a sale consideration of Rs.18,50,000/-.

(iv) However, despite legal notices dated 25.09.2010 and 09.04.2012, the Defendant has failed to render accounts to the Plaintiff, which has necessitated the Plaintiff to institute the suit to recover the sum of Rs. 25,70,400/- with interest at the rate of 12% per annum.

2. Though the Defendant has been served summons in the suit on 23.03.2017, as per the endorsement made by the bailiff, he has not entered appearance in the suit or filed any Written Statement. Hence, this Court by order dated 04.04.2018 directed the matter to be posted before the Additional Master of this Court for recording exparte evidence on 10.04.2018.

3. In order to prove the claim, the Plaintiff on 24.04.2018 was examined as PW-1 and filed proof affidavit and the following documents have been

marked through him:-

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Date</i>	<i>Description of documents</i>
1	P-1	04.06.1993	Certified copy of the sale deed in favour of the Plaintiff
2	P-2	04.06.1993	Certified copy of the sale deed in favour of the Plaintiff
3	P-3	04.06.1993	Certified copy of the sale deed in favour of the Plaintiff
4	P-4	20.08.2010	Certified copy of the GPA No. 696 of 2010 favour to Defendant
5	P-5	26.08.2010	Sale deed executed by the Defendant
6	P-6	13.09.2010	Original Encumbrance Certificate
7	P-7	25.09.2010	Copy of the legal notice to the Defendant
8	P-8	27.09.2010	Original receipt for the RPAD
9	P-9	09.04.2012	Copy of the legal notice to the Defendant
10	P-10	20.04.2012	Original refused return cover from the Defendant

4. It is seen from the sale deed (Ex. P-5) that the consideration was only Rs.10,00,000/- while the Plaintiff has claimed that the property had been sold for Rs.18,90,000/- in the plaint, and no other material has been placed by the Plaintiff for claiming that higher amount. Hence, the Plaintiff shall be entitled to receive only for the said amount of Rs.10,00,000/- from the Defendant.

5. The Plaintiff has claimed interest at 12% per annum from the date of execution of sale deed till realization. It is not the case of the Plaintiff that there has been any written contract between the parties agreeing to pay

the interest at that rate. Having regard to the fact that the Plaintiff did not take immediate steps for instituting the suit after the notices dated 25.09.2010 and 09.04.2012 had been served and had presented the plaint on 26.08.2013 at the verge of expiry of the limitation and the suit had been taken on file only on 02.12.2016, awarding of interest to the Plaintiff till that time would not be proper. In terms of Section 34 of the Code of Civil Procedure, 1908, the Plaintiff shall be entitled to interest at the rate of 6% per annum on the principal sum of Rs.10,00,000/- from 02.12.2016 till realization and proportionate costs.

6. In the result, the Plaintiff is entitled for a judgment and decree the recovery of a sum of Rs.10,00,000/- from the Defendant with interest at the rate of 6% per annum from 02.12.2016 till realization in full with proportionate costs.

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31.10.2018

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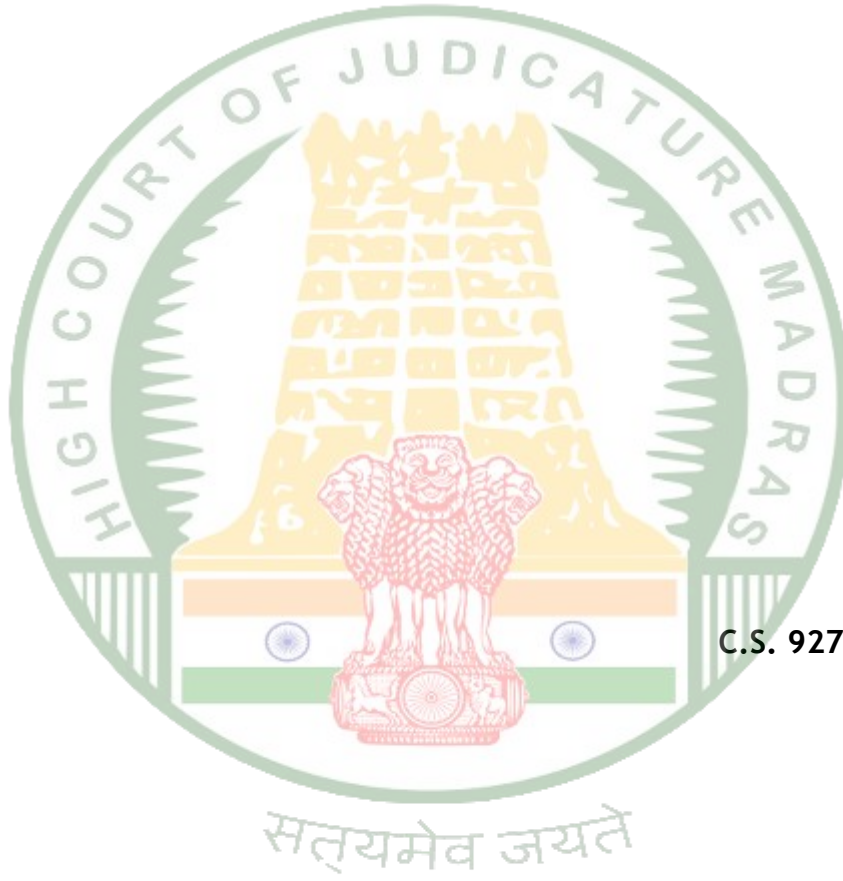
Note: Issue copy of Judgment and Decree by 15.11.2018.

Index : Yes/No

Internet : Yes/No

P.D. AUDIKESAVALU, J.

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C.S. 927 of 2016

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