IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY,THE 28TH DAY OF NOVEMBER 2018

THE MASTER

C.S. No.514 of 2016

Mr.M.K.Ganesh
S/o. Mr.M.Kannan
No.18/22, Canara Bank Colony,
Saligramam, Chennai 600 093. .. Plaintiff

Vs

1. Mr.I.Victor
Donar Cum Trustee
Amaithi Illam, No.108, North Redhills Road,
Villivakkam, Chennai 600 049.

Also at : Vishwam Apartments,
No.4, Bharathidasan Street,
Harbour Colony, Kolathur,
Chennai 600 099.

2. Mrs.Unice Victor
Managing Trustee
Amaithi Illam,
No.108, North Redhills Road,
Villivakkam, Chennai 600 049. ..Defendants

Civil suit praying that this Hon'ble Court be pleased to pass a judgement and decree:

a) directing the defendant to pay a sum of Rs.50,00,000/- (Rupees fifty lakhs only) as on date of the suit due by the defendant to the plaintiff and further directing the defendant to pay the interest thereon Rs.50,00,000/- at 6% per annum from the date of plaint till the date of realization.

b) direct the defendant to pay the costs of this suit.

This suit coming on this day before this court for hearing, the Court made the following order:

This suit has been filed under Order VII Rule 1 of Original Side Rules r/w. Order XXXVII Rule 1 of CPC to try as a summary suit and to pass a judgment and decree directing the defendant to pay a sum of Rs.50,00,000/- (Rupees Fifty Lakhs Only) as on the date of the suit due by the defendant to the plaintiff and further directing the defendants to pay the interest thereon Rs.50,00,000/- at 6% per annum from the date of plaint till the date of realization.

The special summon was duly served to the defendants. As per the Original Side Rules the defendant have to file the application within 10 days seeking leave to defend the suit. In this case the defendant have not filed leave to defend application and so, they are set exparte.

Heard the plaintiff side and suit documents are perused.

It is the case of the Plaintiff that the 1st defendant had established a trust under the nomenclature “Amaithi Illam”. He is the donor cum trustee of the said trust. During the year 2012, the defendant had approached the plaintiff and showed certain documents. Which are the sale agreements, wherein he had entered into with various other vendors for purchase of the properties, being the reason for borrowing amounts from the plaintiff and purpose being to carry out the objects of the trust under the guise of those sale agreements on condition that he had agreed to convey those properties in favour of the plaintiff subsequently. Accordingly, an agreement was entered into, between the plaintiff and defendant and a sum of Rs.14,00,000/- which was paid on various dates to the defendant in the presence of his wife Unice Victor, the 2nd defendant herein, at Amaithi Illam premises. Subsequently, the 1st defendant had entered into a Addendum Agreement dated 13.07.2013, to sell, three different properties for a sale consideration of Rs.52,00,000/- for which the 1st defendant had retained a sum of Rs.14,00,000/- towards advance, paid towards original agreement by the plaintiff. But the 1st defendant had failed and neglected to act upon his promises as per the covenants of the said agreement. Inspite of repeated demands from the plaintiff, finally, the 1st Defendant had agreed to repay a sum of Rs.50,00,000/- as one time settlement, on or before 30.11.2014, for which, the 1st defendant had also issued a cheque bearing No.037549 dated 17.11.2014 for a sum of Rs.1,00,000/- drawn on Axis Bank Limited, Periyar Nagar, Chennai-600 082, towards discharge of part of his liability. The Plaintiff states that as per the instructions from the 1st Defendant the plaintiff presented the said cheque through his banker viz., ICIC Bank Limited, 298, Anna Salai, Chennai-600 006, it was returned as dishonored with an endorsement "Funds Insufficient" on 25.11.2014. Hence, the 1st defendant is liable to pay the fair market value of the properties as per Addendum

Agreement after giving credit to the value of the Addendum Agreement.

The Plaintiff states that since, the 1st defendant had failed and neglected to act upon the terms of the agreements, a legal notice was sent to the 1st defendant, thereby calling upon him to pay the plaintiff the dishonored cheque amount for a sum of Rs.1,00,000/- by cash or demand draft withing 15 days from the date of receipt of that notice, failing which, the plaintiff will be constrained to initiate criminal proceedings against him under Sec.138 of Negotiable Instruments Act, and also to file a suit in the civil court for recovery of a sum as per Addendum Agreement without any further reference to him. The said notice was duly served on the 1st defendant. Even after the receipt of the notice, the defendant did not give any reply. The Plaintiff states that he is given to understand that the 1st defendant and his wife Unice Victor, the 2nd defendant herein are the habitual offenders of entering into fabricated sale agreements with the innocent persons like that of the plaintiff and showing the said sale agreements to various others, will borrow huge amounts thereby cheating the general public at large. Inspite of repeated demands, in continuation of the legal notice, the defendant has not been responding and failed to come forward to settle the amount to the plaintiff, he had lodged a complaint before the V-4, Rajamangalam Police Station, Chennai-99, against the 1st defendant and his wife, since, his wife has conspired with the 1st defendant and running the trust as trustees and along with defendant. Hence the wife of the 1st defendant had also inturn made a false complaint against the plaintiff stating that the plaintiff is threatening her and that she has no relationship with the defendant, without disclosing any iota of evidence. Hence, the alleged complaint was closed as false, against which no further action was preferred.

The Plaintiff states that recently, he had purchased a Protein power, which was made under the nomenclature "Nice Health Mix", wherein he found that the 1st defendant is the sole proprietary of the product in which, it was noticed that the proceeds of the said product goes to "Amaithi Illam" wherein the 1st defendant and his wife are the trustees and the 1st defendant is making exorbitant illegal money by selling this product. Thus, the 1st defendant and his wife area leading a luxurious life. Hence, it is crystal clear that the defendant's wife is protecting him, and the defendant is still hiding himself and escaping his legal liabilities with the help of his wife and the divorce notice said to have been issued to the defendant by his wife also reveals that both of them have conspired together by joining hands with each other cheating the general public at large. The wife of the defendant is also liable for the legal liability of the defendant. The wife of the defendant is enjoying the money collected from various sources viz., the profit from the Nice Health Mix Product, which is run by the defendant, from various foreign Christian organizations and the money collected by the defendant being the donor cum trustee of the "Amaithi Illam" These above events obviously show that the defendant and his wife are cheating the public at large.

Therefore, the plaintiff had caused a legal notice to the defendants and his wife on 25.04.2015 and thereby called upon them to repay a sum of Rs.50,00,000/- to the plaintiff with interest, in terms of the agreement dated 22.12.2012 and the Addendum Agreement dated 13.07.2013, within 15 days from the date of receipt of this notice, failing which, he will be constrained to initiate action against both of them. The notice sent to the 1st defendant was returned unserved. But, his wife had duly received the notice. Hence the suit.

From the above averments and the documents filed on behalf of the Plaintiff, it is seen that the Plaintiff has established the case against the defendant. Moreover, the defendant has not filed leave to defend application and so adverse inference is drawn against the defendant. Hence the Plaintiff is entitled to the relief as prayed for.

In the result, the suit is decreed directing the defendant to pay a sum of Rs.50,00,000/- (Rupees Fifty Lakhs Only) as on the date of the suit due by the defendant to the plaintiff and further directing the defendant to pay the interest thereon Rs.50,00,000/- at 6% per annum from the date of plaint till the date of realization along with cost.

Sd/-MASTER
28/11/2018

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

JJ 18/11/2021