

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2018

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

A.S.No.636 of 2007

T.Amarnath

... Appellant/Plaintiff

Vs.

1.R.Santharam

2.J.Sivasankar

3.M/s.Happy Granite India (P) Ltd.,
rep by its Executive Director,
J.B.Franklin Mills, East Coat Chamber,

T.Nagar, Chennai - 17.

4.J.B.Franklin Mills alias Bakthavatsalam
(R1 & R2 given up in the present Appeal)

... Respondents/Defendants

Appeal Suit filed under Section 96 of the Civil Procedure Code against the judgment and decree dated 31.10.2002 passed by the Additional District and Sessions Judge, Fast Track Court No.IV, Chennai made in O.S.No.5149 of 1996 in so far as dismissing the suit claim against respondents 3 & 4.

For Appellant : Mrs.S.T.P.Kuilmozhi

For Respondents : R1 & R2 - given up
vide order dated 13/12/2017
R3 & R4 - no appearance

J U D G M E N T

The above Appeal arises against the judgment and decree passed in O.S.No.5149 of 1996 on the file of the Additional District and Sessions Court, (Fast Track Court No.IV), Chennai. The plaintiff is the appellant and the respondents are the defendants in the suit.

2.Originally, the plaintiff filed the suit in C.S.No.1032 of 1991, which was subsequently transferred and re-numbered as

O.S.No.5149 of 1996 on the file of the Additional District and Sessions Court, Fast Track Court No.IV, Chennai, for recovery of a sum of Rs.8,63,000/- together with interest.

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

According to the plaintiff, the defendants 1 & 2 approached the plaintiff for financial help and believing the representation, the plaintiff paid a sum of Rs.7,50,000/- for purchasing lands. The defendants 1 & 2 executed a promissory note and executed collateral security and handed over the Documents of Title to the plaintiff. Since the defendants failed to repay the loan amount, the plaintiff has filed the suit.

4.The brief case of the defendants 3 & 4 is as follows:

According to the defendants, they entered into an Agreement with the plaintiff on 02.04.1992 and also paid a sum of Rs.2,00,000/- to the plaintiff as full and final settlement and it was also agreed that the plaintiff must withdraw the suit in C.S.No.1032 of 1991. The Agreement entered into between the defendants 3 & 4 and the plaintiff is binding on the parties. The plaintiff, without filing a memo of compromise, is prosecuting the suit against the defendants. In these circumstances, in view of the Agreement dated 02.04.1992, the defendants prayed for dismissal of the suit.

5.The defendants 1 & 2 remained exparte before the trial Court.

6.Before the trial Court, on the side of the plaintiff, P.W.1 was examined and 9 documents, Ex.A1 to A9 were marked. On the side of the defendants, D.W.1 was examined and 2 documents, Exs.B1 & B2 were marked.

7.The trial Court, after taking into consideration the evidence let in by the parties, decreed the suit against the defendants 1 & 2 and dismissed the suit against the defendants 3 & 4.

8.Now, the plaintiff has filed the Appeal as against the defendants. The plaintiff has given up defendants 1 & 2 in the Appeal. Since the notices sent to the defendants 3 & 4 were returned unserved, paper publication

was effected in respect of the respondents 3 & 4. In spite of printing of the names of the respondents 3 & 4, none appeared for them in this Appeal.

9.It is pertinent to note that the trial Court has decreed the suit as against the defendants 1 & 2. The defendants 1 & 2

have not filed any Appeal as against the decree passed against them by the trial Court. So far as the defendants 3 & 4 are concerned, the trial Court came to the conclusion that in view of the Ex.B2 Agreement dated 02.04.1992 the claim made against the defendants 3 & 4 are liable to be rejected.

10.On a perusal of Ex.B2 Agreement, it is clear that the plaintiff had agreed to withdraw the suit in C.S.No.1032 of 1991 on receipt of Rs.2,00,000/-. The defendants 3 & 4 have paid a sum of Rs.2,00,000/- as full and final settlement. When the defendants 3 & 4 and the plaintiff had entered into an Agreement Ex.B2 and when the plaintiff agreed to withdraw the suit and that they have received a sum of Rs.2,00,000/- as full and final settlement, the trial Court has rightly dismissed the suit as against the defendants 3 & 4. The judgment and decree passed by the trial Court is just and proper.

11.In these circumstances, I do not find any ground to interfere with the judgment and decree of the trial Court. The Appeal is liable to be dismissed. Accordingly, the Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

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To

1.The Additional District and Sessions Judge,
Fast Track Court No.IV,
Chennai.

Copy TO

The Section Officer,
VR Section, High Court,
Madras. (2 Copies)

+1cc to Mr.STP.Kuilmozhi, Advocate SR.No.9630

A.S.No.636 of 2007

VD(CO)
GN(06/03/2018)