



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.09.2018
PRONOUNCED ON : 08.10.2018

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

Second Appeal (MD) No.985 of 2011

K.Senthil Arumugam ... Appellant/Appellant/Defendant

Vs

N.Rajasekaran : Respondent/Respondent/Plaintiff

Prayer: The Second Appeal is filed under Section 100 of CPC, challenging the judgment and decree of the Principal District Court, Thoothukudi, dated 28.06.2011 made in A.S.No.13 of 2009 confirming the judgment and decree dated 29.04.2009 made in O.S.No.348 of 2003 on the file of the Subordinate Court, Thoothukudi.

For Appellant : Mr.S.Ramesh
For Respondent : Mr.R.Manimaran

JUDGMENT

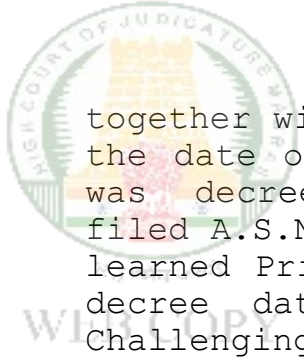
This second appeal had been filed seeking to set aside the judgment and decree in A.S.No.13 of 2009, dated 28.06.2011 on the file of the Principal District Court, Thoothukudi confirming the judgment and decree dated 29.04.2009, made in O.S.No.348 of 2003, on the file of the Subordinate Court, Thoothukudi. This second appeal came up for admission on 30.09.2011.

2. On 30.09.2011, this Court passed the following order:

"Notice of motion returnable in eight weeks. Interim stay on condition that the petitioner / appellant depositing 50% (50 percent) of the decree amount to the credit of O.S.No.348 of 2003 on the file of the Sub Court, Thoothukudi, within four weeks from the date of receipt of a copy of this order, failing which, the Interim Stay granted shall stand vacated automatically without further reference to this Court. Notice."

3. It is an admitted fact that the conditions stipulated by this Court on 30.09.2011 had not been complied with.

4. The defendant is the appellant. The plaintiff had filed the suit in O.S.No.348 of 2003 before the Subordinate Court, Thoothukudi for a direction against the defendant to pay a sum of Rs.1,88,180/-



together with interest at 12% per annum from the date of plaint till the date of realization and for costs of the suit. The said suit was decreed by judgment and decree dated 29.04.2009. The defendant filed A.S.No.13 of 2009, which came up for consideration before the learned Principal District Judge, Thoothukudi, who by judgment and decree dated 28.06.2011, dismissed the appeal with costs. Challenging the said judgment and decree, the defendant had filed the present second appeal.

5.O.S.No.348 of 2003 had been filed by the plaintiff, who is a builder at Tuticorin. The defendant was a Customs Inspector employed in Customs Department. He approached the plaintiff for construction of a residential building at Kathirvel Nagar. A written agreement was entered into on 09.02.2001. The cost of construction was fixed at Rs.500/- per square feet. The plaintiff constructed 1326.97 sq.ft. of area in the ground floor and 59.52 sq.ft., of area in the first floor and also a stair-case to an extent of 46.37 sq.ft. The total construction area came to 1432.86 sq.ft. The total cost of the construction came to Rs.7,16,432.50/-. The defendant requested marble flooring and the difference in costs between the mosaic flooring, which was originally agreed and the marble flooring came to Rs.31,985/-. The defendant further requested construction of additional toilet and bathroom and to also provide the electricity connection and to dig two wells. The total costs of the above works came to Rs.39,762.40/-. The plaintiff, therefore, raised a total bill of Rs.7,88,179.90/-. The defendant had totally paid a sum of Rs.6,00,000/- on various dates. Hence, the suit had been instituted claiming the balance amount of Rs.1,88,179.90/-. The plaintiff had issued Advocate notice, for which a reply was sent. The plaintiff finally instituted the suit arising the said claim.

6.The defendant claimed lack of knowledge over the contents of the agreement. It had been stated that the total cost of the construction was agreed at Rs.400/- per square feet. The plaintiff had altered the sum at Rs.500/- per square feet. The other contentions were denied. It had been stated that a surveyor had been appointed and he had estimated the cost of the construction at Rs.6,00,000/- only.

7.Both parties adduced oral and documentary evidence. Both the Courts below concurrently held on facts that there was an existing agreement between the plaintiff and the defendant, that the cost of construction was Rs.500/- per square feet; that the statement made in the plaint was correct; and that the defendant had made a payment of Rs.6,00,000/- and that the defendant was due payable to a sum of Rs.1,88,179/- together with interest.

8.It is also seen that right from the date of the filing of the second appeal in the year 2011, for the past more than 7 years, the defendant had not complied with the condition imposed. The facts have been settled conclusively by both the Courts below. There are no substantial questions of law involved. I find no merit in the



second appeal necessitating admission. Consequently, the second appeal is rejected.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Principal District Judge, Thoothukudi.
2. The Subordinate Judge, Thoothukudi.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.V.RAGHAVACHARI, ADVOCATE IN SR No. 89851
+ 1 CC TO Mr.R.MANIMARAN, ADVOCATE IN SR No. 89609

CMR

TE/SV/SAR-2 : 26/11/2018 : 3P/7C

Judgment made in
Second Appeal (MD) No.985 of 2011
08.10.2018