

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2019

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.S.No.516 of 2018

B.Govindaraj

... Plaintiff

Vs

P.Kumaran

... Defendant

The Civil Suit is filed under Order IV Rule 1 of OS Rules read with Order VII Rule 1 of CPC, (a) directing the defendant to pay a sum of Rs.3,29,82,500/- (Three Crores Twenty Nine Lakhs and Eighty Two Thousand and Five Hundred only) of which a sum of Rs.1,67,00,000/- (One Crore Sixty Seven Lakhs only) being principal amount and Rs.1,62,82,500/- (One Crore Sixty Two Lakhs Eighty Two Thousand and Five Hundred only) being the interest at the rate of 9% p.a. from 20.04.2007 from the date of Sale Agreement till the date of presentation of this Plaint together with future interest at the rate of 9% per annum on the principal Rs.1,67,00,000/- (One Crore Sixty Seven Lakhs only) and (b) to direct the defendant pay the cost of the suit.

For Plaintiff

: Mr.V.Manisekaran

For Defendant

: Set ex-parte

J U D G M E N T

The suit has been filed for recovery of Rs.3,29,82,500/- of which a sum of Rs.1,67,00,000/- being principal amount and Rs.1,62,82,500/- being the interest at the rate of 9% p.a. from 20.04.2007 from the date of Sale Agreement till the date of presentation of this Plaint together with future interest at the rate of 9% per annum on the principal Rs.1,67,00,000/-.

2.The case of the plaintiff is that he is a business man and he wanted to invest in the property. At that juncture, the defendant informed the plaintiff that he owned the plaint schedule properties and he wanted to sell both the properties. After negotiation, an agreement of sale was entered into between the plaintiff and the defendant on 20.04.2007, by which, the defendant had agreed to sell the properties for Rs.1,74,00,000/-. The plaintiff had paid a sum of Rs.70,00,000/- by way of cash and Rs.30,00,000/- by way of cheque drawn on Indian Bank bearing Cheque No.902241 dated 20.04.2007. Again on 27.04.2007, the plaintiff had paid a sum of Rs.25,00,000/- by way of Demand Draft which was also endorsed in the agreement for sale. the plaintiff further paid a sum of Rs.10,00,000/- by way of cash, Rs.15,00,000/- by way of cheque dated 19.07.2007 bearing Cheque No.81400, another Rs.11,00,000/- was paid by the plaintiff on 19.07.2007 and Rs.6,00,000/- was paid by cheque bearing Cheque No.814031 dated 22.08.2007.

3.It is the further case of the plaintiff that out of the total sale consideration of Rs.1,74,00,000/-, the plaintiff had paid a sum of Rs.1,67,00,000/- to the defendant. It is further stated that the I item of the suit schedule property was purchased by the defendant in a Court auction sale conducted by the Debts Recovery Tribunal, Chennai. However, the sale was set aside on an application filed by the owner on 27.07.2007. The order of the Debts Recovery Tribunal was confirmed by the Debts Recovery Appellate Tribunal by order dated 18.09.2008. The writ petition preferred by the defendant/auction purchaser in W.P.No.20225 of 2009 came to be dismissed and the order was confirmed by the Hon'ble Apex Court in SLP(C).No.21005 of 2012. The Debts Recovery Tribunal passed an order for the return of the sale consideration deposited in the Tribunal, which was returned to the defendant and thereby, the defendant received the sale consideration of Rs.79,82,666/- on 24.01.2017. The defendant issued a cheque in favour of the plaintiff but the same was dishonoured for the reason "insufficient funds". Further, for the notice issued by the plaintiff dated 27.03.2017, a false reply was given by the defendant and hence, the suit.

WEB COPY

4.Though the defendant was served with suit summons and he entered appearance through a counsel, but subsequently no written statement was filed and hence, the defendant was set exparte on 27.09.2019.

5.The learned counsel for the plaintiff would submit that the plaintiff examined himself as P.W.1 and marked the following documents as Exs.P1 to P13 as documentary evidence in order to prove the suit claim:-

- 1) Ex.P1 is the copy certificate of sale of immovable property dated 05.04.2007.
- 2) Ex.P2 is the original Sale Agreement entered between plaintiff and defendant dated 20.04.2007.
- 3) Ex.P3 is the copy of the General Power of Attorney given by the defendant in favour of plaintiff dated 20.04.2007.
- 4) Ex.P4 is the copy of the order passed by the Debt Recovery Tribunal in M.A.No.14 of 2007 in R.P.No.3 of 2007 in O.A.No.206 of 2007 dated 27.07.2007.
- 5) Ex.P5 is the copy of the Order passed by Debt Recovery Appellate Tribunal in M.A.No.225 of 2008 and M.A.No.225 of 2008 dated 18.09.2008.
- 6) Ex.P6 is the original of the order passed in W.P.No.20225 of 2008 by the Hon'ble High Court, Madras dated 12.07.2011.
- 7) Ex.P7 is the copy of the Encumbrance Certificate No.11398 dated 29.05.2012.
- 8) Ex.P8 is the copy of the order in Special Leave Appeal (C)No.21005 of 2012 passed by the Hon'ble Supreme Court of India dtd 30.10.2015.
- 9) Ex.P9 is the original of the order of Return Sale Consideration dated 24.01.2017.
- 10) Ex.P10 is the copy of the Cheque No.910045 for sum of Rs.75,82,666/- in favour of plaintiff.

11)Ex.P11 is the copy of the Cheque returned memo in favour of plaintiff dated 03.03.2017.

12)Ex.P12 is the original of the Legal Notice issued by the defendant dted 07.03.2017.

13)Ex.P13 is the copy of the Legal Notice given by the plaintiff dated 27.03.2017.

6.Mr.V.Manisekaran, learned counsel for the plaintiff further submitted that the plaintiff has proved his case and the Suit will have to be decreed.

7.The defendant was set-exparte on 27.09.2019. The said position continued as of now. Taking into consideration, the pleadings, the evidence of P.W.1 and Exs.P1 to P13, this Court is of the view that the plaintiff has proved his case and the Suit is liable to be decreed and accordingly, the Suit stands decreed with cost.

सत्यमेव जयते

11.11.2019

cse

WEB COPY

K.KALYANASUNDARAM, J.
cse

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.



C.S.No.516 of 2018

WEB COPY **11.11.2019**