

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.07.2019

PRONOUNCED ON : 04.07.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A. No. 699 of 2019
and
CMP No.13351 of 2019

S.Sudha Appellant/Defendant

Vs.

M/s. Rangaswamy Builders Pvt., Ltd.,
rep. by its Managing Director,
Mr.K.Devanarayanan,
No.34/16B, North Tank Square Street,
Triplicane, Chennai - 600 005. Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 12.12.2018 made in A.S.No.167 of 2017 on the file of I Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 30.08.2016 made in O.S. No.8168 of 2008 on the file of I Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr. A.S.Narasimhan

JUDGMENT

In this second appeal challenge is made to the judgment and decree dated 12.12.2018, passed in A.S.No.167 of 2017, on the file of the I Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 30.08.2016, passed in O.S. No.8168 of 2008, on the file of the I Assistant Judge, City Civil Court, Chennai.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. Suit for recovery of money and according to the plaintiff's case, the plaintiff and the defendant entered into a construction agreement dated 21.10.2004, to purchase a flat, now under the occupation of the defendant and the sale deed was executed on 08.12.2004 and it is put forth by the plaintiff that the defendant had directed it to do some additional works and despite the completion of the same and as the defendant failed to pay the balance sale consideration as agreed to under the agreement, the suit has come to be laid.

4. The defendant has resisted the plaintiff's case and according to the defendant, the building was handed over belatedly without completing the work and no additional work has been carried out by the plaintiff and further, according to the defendant, she has paid in excess to the plaintiff and the plaintiff has not properly calculated the interest and accordingly, prayed for the dismissal of the plaintiff's suit.

5. Considering the issues involved between the parties qua the construction of the flat concerned and the agreement entered into between them and the materials placed on record, in all, the trial Court was pleased to hold that the defendant is liable to pay a sum of Rs.1,49,900/- to the plaintiff with interest at 12% from the date of the plaint till the date of decree and thereafter, at the rate of 6%, till the date of realization and accordingly disposed of the plaintiff's suit. Challenging the judgment and decree of the trial Court, the plaintiff has not preferred any appeal, however, the defendant is found to have preferred the first appeal challenging the amount directed to be paid by her to the plaintiff. The first appellate Court concurred with the judgment and decree of the trial Court and dismissed the appeal preferred by the defendant. Impugning the same, the present second appeal has been laid.

6. According to the defendant, even prior to Ex.A1 construction agreement, she had paid a sum of Rs.1,00,000/- by way of Ex.B3 and also made other payments through bank by way of Exs.B8 to B10 and apart from the other payments made by her as admitted by the plaintiff and therefore, it is contended by the defendant that she has paid in excess and the same has not been properly considered by the Courts below and hence, prayed for the interference in the judgment and decree of the Courts below.

7. Inasmuch as the defendant has admitted the construction of the flat as well as the agreement entered into between the parties and pleaded that she has discharged the payment agreed to be paid by her towards the construction of the flat and in fact, pleaded that she has paid in excess than agreed, the onus is on the defendant to establish the same. In this connection, the defendant has challenged the amount mulcted on her to be

paid to the plaintiff by the Courts below and according to her, the same has been determined, without properly relying upon Exs.B3 and B8 to B10. As found by the Courts below, according to the defendant, she has paid the payment of a sum of Rs.1,00,000/- under Ex.B3 and the same is found to be the receipt dated 28.01.2003. The same is found to be bearing receipt no.127 received by the plaintiff. According to the defendant, the abovesaid payment has not been given due credit to by the plaintiff. However, according to the plaintiff, the abovesaid payment was made only on 28.01.2004 and not on 28.01.2003 and the year had been mistakenly noted as 2003 instead of 2004 in the abovesaid document and the same according to the plaintiff could be evidenced from Exs.A8 and A9. As found by the Courts below, particularly, the first appellate Court, Ex.A8 is the relevant receipt book and Ex.A9 is the carbon copy of Ex.B3. In the said receipt book and on a perusal of the same, considering the serial number of the receipts contained in the abovesaid book, when it is found that the receipt number 126 is dated 08.01.2004 and the earlier receipt 125 is also found to be dated 03.01.2004 and the subsequent receipt to Ex.A9 bearing no.128 is dated 14.02.2004, accordingly it is found that the receipt marked as Ex.B3 has been wrongly dated as 2003 instead of 2004 and furthermore, considering the payment of the abovesaid sum by way of cheque bearing No.5917 drawn on Punjab National Bank and the other evidence adduced in the matter, it is found that the plaintiff had given due credit to the abovesaid payment and therefore, the Courts below had rightly rejected the case of the defendant that the said payment had not been taken into consideration by the plaintiff.

8. As regards the payments said to have been made by the defendant vide Exs.B8 to B10, the abovesaid payments had been denied by the plaintiff as having been made towards the construction costs and when it is seen that the defendant is liable to pay the sum towards the obtainment of the water connection, electricity supply connection, drainage connection etc., and when it is further noted that the amounts paid under Exs.B8 to B10 had been received towards the charges of the obtainment of the abovesaid connections, when as per the agreement, the defendant is liable to pay the deposit amount for securing the abovesaid connections, in such view of the matter, it is seen that the abovesaid payments made by the defendant amounting to Rs.80,000/-, having been tendered towards the security deposit for securing such connections from the authorities concerned, in such view of the matter, when the defendant has not pleaded anything about the abovesaid documents in the written statement and only projected the same during the course of evidence and accordingly, the defendant not entitled to project new pleas for the first time during the course of evidence and in any event, when the abovesaid payments are

explained by the plaintiff, in all, it is seen that the Courts below are found to be fully justified in determining that the defendant is liable to pay a sum of Rs.1,49,000/- with interest as decided by them.

9. The abovesaid determination of the Courts below in fixing the amount liable to be paid by the defendant to the plaintiff towards the construction agreement entered into between the plaintiff, centering on the factual matrix and not involving any question of law as such and when the reasons afforded by the Courts below for arriving at the said amount is found to be based on the proper appreciation of the oral and documentary evidence adduced in the matter and not suffering from any irrationality or perversity, in all, I do not find any reason to interfere with the judgment and decree of the Courts below. Accordingly, no substantial question of law is found to be involved in the second appeal and the second appeal is found to be devoid of merits and hence the same is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1. The I Additional Judge,
City Civil Court, Chennai.

2. The I Assistant Judge,
City Civil Court, Chennai.

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and
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TM(CO)
GMY(23/10/2019)