



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.12.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

S.A. (MD) .No.260 of 2015

WEB COPY

V.K.Sasikumaran

..Appellant / Respondent / Plaintiff

Vs.

1.R.Rajkumar

2.The Joint Commissioner/Executive Officer,
Incorporated and Unincorporated

(Now called Kanyakumari District Temples),
Suchindrum, Suchindrum Village,
Agastheewaram Taluk,

Kanyakumari District. ...Respondents / Appellant / Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 23.12.2014 on the file of the learned I Additional Subordinate Judge, Nagercoil in A.S.No.83 of 2014, reversing the judgment and decree dated 05.09.2013 on the file of the learned Principal District Munsif, Nagercoil in O.S.No.71 of 2011.

For Appellant : Mr.K.N.Thampi

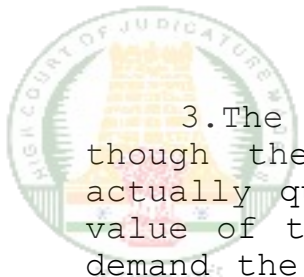
For Respondents : Mr.H.Thayumanaswamy

JUDGMENT

The plaintiff, who has succeeded before the trial Court in obtaining decree for payment of money for a sum of Rs.34,698/- upon its reversal by the lower appellate Court in A.S.No.83 of 2014, has come up with this appeal.

2.According to the plaintiff, he was entrusted with the contract of construction of a compound wall for the High School run by the defendants at Thirparappu Village in Kanyakumari District. The total value of the contract is Rs.1,25,000/-. During the course of contract, the defendants paid a sum of Rs.52,733/- and Rs.36,653/- to the plaintiff on 18.08.2005 and 28.08.2008 leaving a balance amount of Rs.35,614/- due under the contract for the construction of the compound wall. It is the further claim of the plaintiff that he was asked to do additional maintenance work outside the tender, for which, he had incurred an expense of Rs.6,000/-. Thus, the total amount due comes around Rs.41,614/-. Therefore, the plaintiff has filed a suit for recovery of the said sum.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The suit was resisted by the defendants contending that though the contract value was Rs.1,25,000/-, the plaintiff has actually quoted 1.31% lesser amount in his tender than the actual value of the tender. Therefore, the plaintiff is not entitled to demand the balance amount on the basis of the contract value. On the additional work said to have been done by the plaintiff, the defendants would contend that the said work was done by the plaintiff unauthorizedly. Therefore, they are not liable to pay the cost of the additional work said to have been done by the plaintiff.

4.The trial Court upon considering of all the evidence on record has concluded that the defendants are liable to pay a sum of Rs.28,698/- towards the short fall in the construction of compound wall by the plaintiff and Rs.6,000/- towards additional work. On the said finding, the trial Court granted a decree for a total sum of Rs.34,698/- with interest at 9% from the date of filing the suit till the date of judgment. Aggrieved, the defendants preferred an appeal in A.S.No.83 of 2014 on the file of the I Additional Sub Court, Nagercoil.

5.The learned I Additional Subordinate Judge, on a reconsideration of the evidence found that the plaintiff is not entitled to the amount of Rs.6,000/- claimed by him towards additional work since the same was unauthorized. The learned I Additional Subordinate Judge pointed out that the plaintiff has not produced any document to show that he was required to do the work by the defendants. The claim of Rs.6,000/- was rejected, even though the plaintiff had chosen to examine the Administrator of the school and marked the certificate through her to the effect that the additional work was done by the plaintiff based on the recommendation of the then Headmaster. As regards the amount due under the contract, the lower appellate Court concluded that Ex.B2 and Ex.B3 would reveal the fact that the measurements have been taken and the amounts have been paid as per measurement scale.

6.The lower appellate Court referred to Ex.A1 to come to the conclusion that the value of the contract between the plaintiff and the defendants was not Rs.1,25,000/-. The sum of Rs.1,25,000/- was the estimated cost of the work made by the Department. From the recital in Ex.A1, the lower appellate Court concluded that the plaintiff has actually quoted the lesser amount in his tender. On the above conclusion, the learned I Additional Subordinate Judge found that the plaintiff was not entitled to any amount for the additional work or under the contract. On the said conclusion, the learned I Additional Subordinate Judge allowed the appeal and dismissed the suit in its entirety. Aggrieved, the plaintiff has filed the present appeal.

7.The following questions of law were framed at the time of admission.

1.Whether the lower appellate Court is correct in

holding that the contract is not for Rs.1,25,000/- when the



documents for the same show that the same is for the said amount?

2. Whether the refusal by the respondents to pay the entire money claimed by the appellant is not barred by estoppel?

3. Whether the case of the respondents is not unjust enrichment and hence unsustainable?

4. Whether having accepted the additional work done by the appellant and derived benefits thereof, the respondents are not estopped from refusing to pay the money therefor, inter alia, by principles of promissory estoppel?

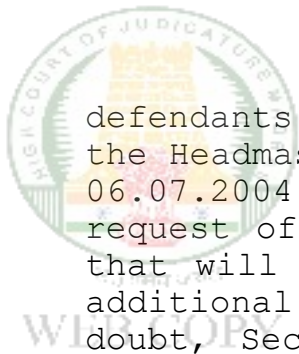
5. Whether the judgment and decree of the lower appellate Court are correct and sustainable on account of its failure to formulate and decide proper points for determination in the appeal before it, as mandated by order 41, Rule 31 of CPC?

8. Mr. K. N. Thampi, learned counsel appearing for the appellant/plaintiff would vehemently contend that the lower appellate Court was not right in concluding that one of the work has been completed under Ex.B2 and Ex.B3 and the value of the same has been paid over to the plaintiff. He would also point out that the cost estimated by the defendants was Rs.1,25,000/- and on completion of the work, the plaintiff is entitled to get the same. On the additional work, the learned counsel would submit that under Section 70 of the Indian Contract Act, the plaintiff is entitled to recover the value of the additional work.

9. Mr. H. Thayumanaswamy, learned counsel appearing for the respondents would submit that the lower appellate Court on the appreciation of the evidence has found that there was no permission for the additional work and hence, the defendants are not liable to pay the value of the said work. He would further submit that Section 70 of the Act requires that any work done should be lawful so as to enable the person, who does the work, to claim the value of the work from the respondents. Since the additional work was not authorized by the competent authority and even according to the plaintiff, it was done at the behest of the Headmaster of the school, the authorities are not bound to pay the value of the said work. As regards the value of the contract, Mr. H. Thayumanaswamy, learned counsel would submit that the plaintiff cannot seek to recover the so called balance.

10. I have considered the rival submissions made on either side.

11. As far as the additional work is concerned, the admitted case of the plaintiff is that it was not authorized by any of the



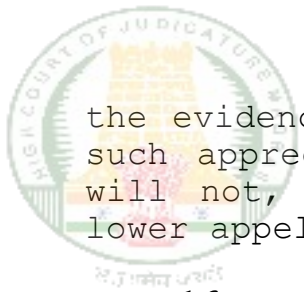
defendants. It is claimed that the work was done at the behest of the Headmaster of the school and not under the tender document dated 06.07.2004. In the absence of any authorization, the plaintiff, at request of the Headmaster, seems to have done some extra work, but that will not construe any right seeking recovery of the value of additional work, which was done without proper authorization. No doubt, Section 70 of the Act enables a person, who had done the extra work, to seek recovery from the person, who enjoys the benefit of value for the additional work, but Section 70 of the Act requires that the additional work done must be lawful.

12. In the case on hand, admittedly, the Headmaster of the school was not a person authorized to entrust certain work with the plaintiff. Therefore, I don't think that the lower appellate Court was wrong in coming to the conclusion that the plaintiff is not entitled to the cost of the additional work. In view of the same, the question of law Nos. 3 and 4 are answered against the appellant.

13. As regards the money payable under the tender document dated 06.07.2004, the lower appellate Court has come to the conclusion that the work has been measured under Ex.B2 and Ex.B3 and that the value of the work has been paid to the plaintiff. Even according to Ex.A1 extracted by the lower appellate Court, the value of the contract is 1.31% lesser than the estimated cost. The estimated tender cost of Rs.1,25,000/- is not disputed. Therefore, 98.69% of the estimated cost of Rs.1,25,000/- is Rs.1,23,362.50/-. It is not in dispute that the plaintiff has completed the work as per the tender. Therefore, he is entitled to receive a sum of Rs.1,23,362.50/- towards the value of the work done by him as authorized by the defendants. It is not in dispute that the defendants have paid only a sum of Rs.96,302/- leaving a balance amount of Rs.27,060.50/-. Therefore, the plaintiff is entitled to get the same.

14. The lower appellate Court has concluded that Ex.B2 and Ex.B3 evidence payment of money as per the measurement. I have gone through Ex.B2 and Ex.B3. There is no document to show that the plaintiff has been paid the amount in full quit under the contract. Admittedly, the contract value is Rs.1,25,000/-. It is not the case of the defendants that the plaintiff did not complete the work in full. If the value of the tender is Rs.1,23,362.50/- and if it is found that the plaintiff has completed the entire work, he is entitled to get the entire amount. The defendants cannot claim to have the payment of Rs.27,060.50/-, in the absence of any specific acknowledgment to that effect from the plaintiff. I am of considered opinion that the lower appellate Court was not right in dismissing the suit in its entirety in respect of the contract dated 06.07.2004. Hence, the questions of law Nos.1 and 2 are answered in favour of the appellant.

15. As regards the 5th question of law, even though the lower appellate Court in its order has not framed proper points for
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the evidence on record and has come to its own conclusion based on such appreciation. Mere non framing the points for determination will not, in my considered opinion, vitiate the findings of the lower appellate Court.

16.It remains to be seen that what is the amount that the plaintiff would be entitled to. The value of the contract is Rs.1,23,362.50/-. The defendants have paid a sum of Rs.96,302/- leaving a balance amount of Rs.27,060.50/-.

17.In the light of the above observation, the plaintiff is entitled for a sum of Rs.27,060.50/- with interest at the rate of 9% from the date of filing of the suit till the date of payment.

18.Accordingly, the Second Appeal stands allowed. The judgment and decree dated 23.12.2014 on the file of the learned I Additional Subordinate Judge, Nagercoil in A.S.No.83 of 2014 is hereby set aside. The suit in O.S.No.71 of 2011 stands decreed for a sum of Rs.27,060.50/- with interest at the rate of 9% per annum from the date of suit till the date of filing. No costs.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

To

1.The I Additional Subordinate Judge, Nagercoil.

2.The Principal District Munsif, Nagercoil.

Copy to:

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 Copies)

+1 CC to M/s.H.THAYUMANASWAMY, Advocate (SR-105343[F]

+1 CC to M/s.K.N.THAMBI, Advocate (SR-105431[F]

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