

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2020

CORAM:

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

A.S.No.700 of 2017

A.Nanjan ... Appellant/Plaintiff
Vs.
Mahaboob Alamkhan .. Respondent/Defendant

PRAYER: Appeals under Section 96 of the Code of Civil Procedure, 1908, against the judgment and decree made in O.S.No.29 of 2013, on the file of the District Judge, Udthagamandalam, dated 22.08.2017.

For Appellant : Mr.S.L.Sudarsanam

For Respondent : Mr.A.Immanuel

JUDGMENT

The Appeal Suit on hand is directed against the judgment and decree dated 22.08.2017 in O.S.No.29 of 2013. The plaintiff is the appellant before this Court and the suit was instituted for recovery of money claiming Rs.20,58,303/- as well as the cost.

2. The contentions of the appellant/plaintiff is that the plaintiff assigned with the contract work for renovation of the guest house owned by the defendant bearing D.No.983, Ellici Mahal, situated at North Lake Road, Ooty in the year 2008. The defendant agreed to pay the material cost, cost of the construction work completed by the plaintiff in the suit mentioned guest house. It is further agreed by the defendant that 20% commission for the work completed by the plaintiff will be paid. Believing the oral promise given by the defendant that he will pay 20% commission for the works completed, the plaintiff had completed the renovation work and informed the same to the defendant.

3. Setting out these facts, the appellant instituted the suit for recovery of money. The defendants in their written statement denied the contentions of the appellant/plaintiff by stating that the defendant is the owner of the property and the defendant at no point of time agreed to pay 20% commission for the work allegedly completed by the plaintiff. Such an oral agreement is imaginary and the defendant had not offered any such commission for the works completed by the plaintiff in

the suit mentioned guest house situated at Ooty. It is contended that the plaintiff himself admitted the fact that the alleged agreement is an oral one and based on such oral allegations, suit cannot be entertained at all. The defendant reiterated that the cost the renovation works were paid then and there and the said amount was acknowledged by the plaintiff and therefore question of further payment would not arise at all. Disputing entire contention, the written statement was filed.

4. The Trial Court framed the issues as to whether the plaintiff is entitled for 20% commission for the works completed as per the oral promise given by the defendant. Whether such oral promise was given by the defendant or not and whether the claim of plaintiff to the tune of Rs.20,58,303/- is liable to be paid by the defendant or not. In respect of the issues, the Trial Court considered the facts as well as the evidences produced by the respective parties to the lis on hand, the findings which all are relevant to be considered for the purpose of deciding the Appeal Suit is that the plaintiff himself had admitted the fact that he received Rs.79,00,000/- from the defendant for the execution for the renovation work in the suit mentioned guest house at Ooty. In respect of the materials purchased as well as the renovation works done, the defendant had already paid Rs.79,00,000/- and even in the notice issued by the plaintiff he has claimed the commission of 20% of the work completed and he has not disputed the payment already made by the defendant for the completion of the renovation works in the suit mentioned guest house.

5. The Trial Court considered the deposition of the plaintiff as well as the notice issued by the plaintiff regarding the claim amount. It is relevant to consider the cross examination of the plaintiff, which reads as under:-

"நான் அனுப்பிய வாசா.ஆ.7 அறிவிப்பில் நான் பிரதிவாதியின் கட்டிடத்தில் என்னென்ன வேலை செய்தேன் என்ற விவரத்தை சொல்லியுள்ளேனா என்றால் தெரியவில்லை. நான் என்னுடைய அறிவிப்பில் கட்டிட வேலையை மேற்பார்வை செய்வதற்காக 20 சதவீதம் செய்து முடிக்கப்பட்ட வேலை மதிப்பில் கொடுக்கப்பட வேண்டும் என கேட்டுள்ளேன் என்றால் நான் 15 சதவீதம் தான் கேட்டேன், ஆனால் பிரதிவாதி 20 சதவீதம் வாங்கிக்கொள்ளுங்கள் என்று சொன்னார். அதன்படி கேட்டுள்ளேன். அவ்வாறு நான் சொன்னதற்கு ஏதாம் ஆதாரம் தாக்கல் செய்யவில்லையென்றால் சரிதான். நான் பிரதிவாதி கட்டிடத்தை கட்டுவதற்காக நான் பொருட்களின் விவரம், என்னென்ன வேலை செய்து முடித்தேன் என்ற விவரம் ஆகியவைகளை என்னுடைய வழக்குரையிலும் பிரமாண வாக்குமூலத்திலும் சொல்லியுள்ளேனா என்றால் எல்லாம் வக்கீலிடம் சொல்லியுள்ளேன். வா.சா.ஆ.3 தொடர் ரசீதுகளில் பிரதிவாதியின் பெயர் இல்லை என்றால் சரிதான். அந்த ரசீதுகளில் கண்டுள்ள பொருட்கள் வழக்கு கட்டிடத்திற்காக தான்

வாங்கப்பட்டது என்பதற்கான ஆதாரம் தாக்கல் செய்துள்ளேனா என்றால் இல்லை. இந்த கட்டிடத்தை கட்டுவதற்கு நானும் பிரதிவாதியும் எழுத்து மூலமாக எந்த ஒப்பந்தமும் செய்து கொள்ளவில்லை. வாய்மொழி ஒப்பந்தம் தான். நான் கொடுத்த கணக்கை பிரதிவாதி ஏற்றுக்கொண்டார் என்பதற்கு ஏதாவது ஆதாரம் தாக்கல் செய்துள்ளேனா என்றால் இல்லை."

6. Relying on the deposition of the plaintiff, the Trial Court arrived a conclusion that the plaintiff had not submitted any document to establish that the defendant had agreed to pay 20% commission for the work completed. This apart, the plaintiff had not produced any document. Admittedly, during the cross examination no such agreement was entered into between the parties to the suit. When any agreement between the parties had not been established and the plaintiff has not filed any document or evidences establishing the claim, there is no reason to consider the claim of the plaintiff and accordingly, the Trial Court rejected the Suit.

7. When the Appeal Suit is taken up for hearing, this Court requested the parties to be present so as to ascertain whether there is any possibility of settlement. Such an opportunity was given to the parties by this Court in order to ascertain the true facts and enabling the parties to act with good conscious. Both the appellant as well as the respondent are present before this Court and both of them are senior citizen and able to articulate their case. Both are literates and knowledgeable. The appellant came along with his son and reiterated that he is entitled for 20% commission as orally agreed by the respondent. Honestly he admitted that the jeep possessed by him was purchased by the respondent in his name and at his permission he was utilizing the same and he is ready to adjust the cost of the jeep in lieu of the suit claim amount and the balance is to be paid. The appellant reiterated that the respondent orally agreed to pay 20% commission for the works completed.

8. The respondent, who is also equally literate made a submission by stating that he used to settle the money then and there immediately and at no point of time he delayed the actual payment made to the appellant. On completion of works and demand, the respondent settled the amount spent for the renovation and for the materials purchased for renovation works. There is no due at all. He paid the entire amount and in fact, the payment of 79,00,000/- was admitted by the appellant himself in the suit. Further the respondent emphasised that at no point of time he made any such oral promise that he will pay 20% commission for the works completed. Such a claim is imaginary and he allowed the appellant to use his jeep for his personal purpose also. He has misused the permission granted and he was frequently called by the local police and he was being harassed by the police on account of the purchase of the jeep in the name of

the appellants. He had undergone on several occasions such agony and harassment by the local police. Under these circumstances, the respondent in clear terms reiterated that there was no oral agreement and the appellant had also has not produced any document to establish any such agreement and therefore the appeal is liable to be rejected.

9. This Court is of the considered opinion that any claim regarding recovery of money is to be proved through documents or evidences and mere statement in the plaint is insufficient to consider such money claim. Oral promises if at all established through some evidences alone can be considered by the Courts and not otherwise.

10. Oral agreements may not be an illegal one, however such oral agreements are to be established beyond any pale of doubt. Unestablished oral agreements cannot be a ground for claiming recovery of money. This being the principles to be followed, the Trial Court considered these aspects, even based on the deposition of the plaintiff himself as well as the notice sent by the plaintiff for the purpose of institution of the suit before the Trial Court. Even in the notice, the plaintiff has clearly stated that he claims the commission amount of 20% for the works completed and at no point of time he claimed in the notice regarding the payment due for the material purchase or the works done already.

11. In respect of the renovation works, the respondent had already settled Rs.79,00,000/- which was admitted. This apart, the respondent purchased the jeep at his cost in the name of the son of the appellant and said fact is also admitted. Thus the conduct of the respondent in this case cannot be doubted at all. This being the factum, the Trial Court also arrived a conclusion that the appellant has not produced even a single document to establish that there was any such promise for the payment of 20% commission to the appellant for the work completion. In the absence of any such proof, the Trial Court is right in arriving a conclusion that the appellant/plaintiff is not entitled for any relief as sought for in the plaint.

12. This Court do not find any perversity or infirmity in respect of the findings arrived. Consequently, the judgment and decree dated 22.08.2017 passed in O.S.No.29 of 2013 is confirmed, and A.S.No.700 of 2017 is dismissed. No Costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

Pkn.

To

The District Judge,
Udhagamandalam.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

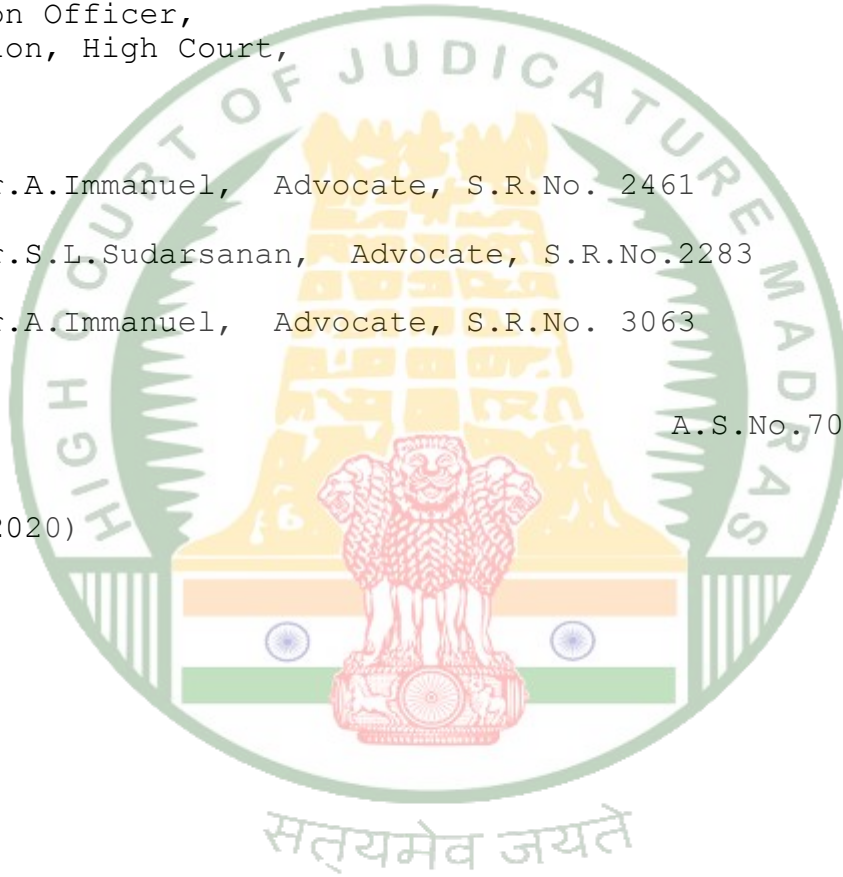
+2cc to Mr.A.Immanuel, Advocate, S.R.No. 2461

+1cc to Mr.S.L.Sudarsanan, Advocate, S.R.No.2283

+2cc to Mr.A.Immanuel, Advocate, S.R.No. 3063

A.S.No.700 of 2017

MR (CO)
GN (27/02/2020)



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