



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.No.220 of 2012

M/s.Sagar Investments,
Rep by its Partner Mr.T.Jayaraman,
No.69, Peters Road, Royapettah,
Chennai - 600 014. ... Appellant/1st Respondent/Plaintiff

Vs.

1.A.S.Kannan 1st Respondent/2nd Respondent/1st Defendant
2.R.K.Moorthy ...2nd Respondents/2nd Respondent/1st Defendant

Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 22.04.2010 passed by the Learned IV Additional Judge, City Civil Court, Chennai in A.S.No.503 of 2008 reversing the Judgment and decree dated 04.09.2007 passed by the Learned I Assistant Judge, City Civil Court, Chennai in O.S.No.5173 of 2003.

For Appellant : Mr.T.S.Baskaran

For Respondents : No appearance for R1
Mr.R.Thirumoorthy for R2

JUDGMENT

This appeal has been filed by the appellant against the impugned judgment and decree dated 22.04.2010 passed in A.S.No.503 of 2008 by the IV Additional Judge, City Civil Court, Chennai. By the impugned judgment and decree in A.S.No.503 of 2008, the said Court had allowed by the aforesaid appeal filed by the 2nd respondent/2nd defendant against the judgment and decree dated 04.09.2008 in O.S.No.5173 of 2003 by the appellant. The appellant had filed O.S.No.5173 of 2003 to recover an amount of Rs.2,39,335/- together with interest accrued thereon under a hire purchase agreement entered between the appellant and the 1st respondent who choose to remain exparte before the Trial Court. The 2nd respondent was the guarantor. Before the Trial Court, the



appellant had marked as Exs.A1 to A26 and examined to one P.Udhayakumar as the sole witness.

2.The 2nd respondent tendered evidence and DW1 marked exhibit as B1 series. Though the 2nd respondent had agreed that the judgment and decree dated 04.09.2007 had correctly fastened liability on respondent, he was aggrieved by that portion which made him jointly and severally liable. The First Appellate Court while allowing the appeal filed by the 2nd respondent has set aside the entire judgment and decree dated 04.09.2007 in O.S.No.5173 of 2003.

3.Under these circumstances, the appellant who was the successful plaintiff before the Trial Court and has filed this appeal before the appellant.

4.In this appeal, the appellant has raised the following three questions of law arises for the determination under Section 100 of the CPC.

"Substantial questions of law

(a)Whether the learned Additional City Civil Judge was right in dismissing the suit in the absence of any oral evidence by the 1st defendant and when the 1st defendant had not appealed against the decree against him?

(b)Whether the learned Additional City Civil Judge was right in recording findings on facts for which there was no evidence on the side of the defendants?

(c)Whether the learned Additional City Civil Judge was in error in rejecting the categorical admission of D.W.1 in regard to the execution of Ex.A-3 and proceeding to dismiss the suit?"

5.This Court by an order dated 29.04.2019 had directed the 2nd respondent to pay a sum of Rs.1,50,000/- to the appellant. The learned counsel for the Appellant also submits that the aforesaid amount has been received by the appellant. The Court had also recorded that the learned counsel for the 2nd respondent would convinced the client namely the 2nd respondent to settle the entire amount to settle the case.



6.Today when the case was taken up for hearing, the learned counsel for the appellant submits that the appellant is satisfied with the amount of Rs.1,50,000/- paid by the 2nd respondent/guarantor and to that extent this appeal against the 2nd respondent is not been pressed against. He therefore submits that the appellants are not pressing this appeal against the 2nd respondent/2nd defendant.

7.The learned counsel for the appellant submits that the impugned judgment and decree of the First Appellate Court (IV Additional Judge, City Civil Court, in A.S.No.503 of 2008) to that extent it exonerates the 1st respondent/defendant is to be interfered.

8.The learned counsel for the 2nd respondent is present and submits that the appeal may be partly allowed as prayed for by the learned counsel for the appellant and the 2nd respondent be exonerated from all liabilities that was fastened by the Trial Court by upholding the impugned judgment and decree to that extent of the Trial Court.

9.The First Appellate Court has committed an error in upsetting the entire judgment and decree passed by the Trial Court. Even though, the First Appeal was confined to the liability fastened on the 2nd respondent, the First Appellate Court has erred in upsetting the entire judgment and decree dated 04.09.2007 passed by the I Assistant Judge, City Civil Court, Chennai in O.S.No.5173 of 2003. The Substantial questions of law raised by the appellant shall stands answered in favour of the appellant. Since the 2nd respondent has paid a sum of Rs.1,50,000/- pursuant to the order dated 29.04.2019, the judgment and decree passed by the Trial Court stands modified to that extent.

10.This appeal stands allowed to that extent. No costs.

Sd/-

Deputy Registrar
(Spl Cell CJ Conf)

//True Copy//

Sub Assistant Registrar

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To:

1.The learned IV Additional Judge,
City Civil Court, Chennai.

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

+1cc to Mr.T.S.Baskaran, Advocate SR.No.29483

S.A.No.220 of 2012

RR(CO)
GN(25/11/2021)