

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Civil Suit No.257 of 2020
and
A.No.2284 of 2020

1. Mr.R.Ramesh, S/o Mr.Ramanathan
2. Mrs.Uma Ramesh, W/o Mr.R.Ramesh .. Plaintiffs

Vs.

Mr.SM.Palaniappan,
S/o Mr.Somasundaram Chettiar .. Defendant

Plaint filed and numbered as Civil Suit in C.S.No.257 of 2020 under Order 7 Rule 1 of the Code of Civil Procedure, read with Order 4 Rule 1 of the Madras High Court Original Side Rules, praying for judgment and decree against the defendant to direct:

- (i) the defendant to pay the plaintiffs a sum of Rs.1,02,76,128/- together with interest @ 18% per annum on Rs.94,00,000/- from the date of filing the suit till the date of realisation in full, and
- (ii) to pay the costs of the suit.

For plaintiff : Mr.Rathina Asohan

For defendant : Defendant set ex-parte on 19.08.2021

No appearance

JUDGMENT

The Civil Suit is filed by the plaintiffs to direct the defendant to pay a sum of Rs.1,02,76,128/- together with interest @ 18% per annum on Rs.94,00,000/- from the date of filing the suit till the date of realisation in full and also to pay the costs of the suit.

2. It is the case of the plaintiffs that, during the first week of July 2019, the defendant represented to the plaintiffs that the defendant is the absolute owner of the land measuring an extent of about 4 grounds, situated at No.14, Vijayaraghava Lane, Theagaraya Nagar, Chennai-600 017. The defendant also claimed that he has given the said property to develop as a residential apartment, named "Sridevi Natwest Nedil" through a joint development agreement signed with a builder/developer, namely M/s.Natwest Construction Company and that the defendant as land owner,

has been allotted some of the Flats bearing Nos.1-A, 1-B, 1-C, 2-B, 3-A and 3-B in respect of the defendant's share. Believing such representation of the defendant, the plaintiff had shown interest in buying a Duplex flat (1-B and 2-B) together with 4 car parking slots, in the said project, for which, the defendant demanded a price at Rs.15,350/- per Sq.Foot and a sum of Rs.20 lakhs for four parking slots (Rs.5 lakhs each), subject to legal clearance on title. The plaintiff responded to the said representation/request of the defendant and accordingly, the plaintiffs paid a sum of Rs.50,000/- to the defendant by way of cheque (bearing No.587804) on 06.07.2019, drawn on Indian Overseas Bank, Thegaraya Nagar Branch, Chennai, in favour of the defendant as token advance, which was received by the defendant, who issued written temporary receipt, by assuring the plaintiffs that he would provide copies of the title deeds, parent deeds and Revenue documents, for title verification. Further, the defendant, in writing, insisted on substantial amount as advance to enter into a sale agreement.

WEB COPY

3. It is further averred by the plaintiff in the plaint that the defendant had been dragging on the matter, without providing the said documents,

inclusive of encumbrance certificate, to the extent of even visiting the house of the plaintiffs, by seeking further advance amount in cash, as the defendant was in urgent financial needs. It is further stated by the plaintiffs that the defendant is running various businesses and also owns several immovable assets in T.Nagar, Chennai. Believing the words of the defendant, the plaintiffs had paid amounts on various dates in cash and also by way of cheques. But the defendant delayed by not even providing the required documents. The details of the payments made by the plaintiffs are as under:

Sl. No.	Date	Bank details	By cheque / cash	Amount
1	06.07.2019	Indian Overseas Bank	Cheque No.587804	50,000
2	18.08.2019	---	cash	16,00,000
3	21.08.2019	---	cash	19,35,000
4	01.09.2019	Indian Overseas Bank (given in the name of the wife of the defendant)	Cheque No.587806	17,15,000
5	18.09.2019	---	cash	30,95,000
6	22.09.2019	Indian Overseas Bank (given in the name of the wife of the defendant)	Cheque No.587810	10,05,000
				94,00,000(Total advance amount paid by the plaintiffs)

As the defendant was keen only in receiving the above tabulated advance amounts, and further dragged on the matter, the plaintiffs requested for return of the above paid advance amounts.

4. At last, the defendant in December 2019, handed over a photo-stat copy of legal opinion, dated 27.04.2017 to the plaintiffs, and the said legal opinion was obtained in the name of the builder/developer, from which the plaintiffs found that it contained only skeletal statements and history of the property in brief, and thus, on being not satisfied with the title of the property under dispute, the plaintiffs were of the opinion that there is no perfect title to the defendant in respect of the said property(ies), which shows that the defendant is not the owner of the said property(ies). Hence, the plaintiffs dropped their proposal to buy the property(ies), which was also duly informed by them to the defendant in the first week of January 2020, thereby, the plaintiffs requested the defendant to return the advance amounts.

5. It is the further stand of the plaintiffs in the plaint that the defendant promised to return the advance amounts by 07.03.2020, which he failed by giving lame excuse, and the defendant did not even respond to the phone calls of the plaintiffs. There was suspicion/apprehension by the plaintiffs towards the defendant in not paying the amount before 07.03.2020, and there was communication on 07.03.2020 even in respect of exchange of the place of location of the building, i.e. to second floor.

6. As the defendant did not return the advance amounts as agreed, the plaintiffs sent a legal notice dated 27.07.2020 calling upon the defendant to pay a sum of Rs.1,00,53,622/- within a week on receipt of the said legal notice. The defendant replied on 03.08.2020, refuting the claim of the plaintiffs, by admitting the factum of receipt of Rs.94,00,000/- from the plaintiffs between 06.07.2019 and 22.09.2019 as advance.

7. It is the further averment of the plaintiff in the plaint that the defendant made a claim of Rs.4,68,94,420/- from the plaintiffs towards the purchase of flats. Further, the defendant took the plaintiffs to the office of

M/s.Sundaram Finance Limited to prove that the defendant's title is perfect. The plaintiffs sent a re-joinder on 14.08.2020 through their counsel detailing their stand, and the said re-joinder was also received by the defendant on 17.08.2020. It is the further case of the plaintiffs in the plaint that there is no concluded contract between the plaintiffs and the defendant to purchase the flats. The plaintiffs came to know about the legal defects in the property(ies) only in January 2020, which was also duly conveyed by the plaintiffs to the defendant. Though the plaintiffs requested the defendant to return the money, and inspite of the assurance given by the defendant to pay the same on or before 07.03.2020, ultimately, the defendant failed to return the amounts paid by the plaintiffs. It is the grievance of the plaintiffs that the defendant had obviously used the sum of Rs.94,00,000/- for his own business and would have benefited from the same. Fearing that the defendant may create encumbrances in his business property by using the amounts paid to him by the plaintiffs, the plaintiff also prayed that the defendant may be directed to furnish security to the suit claim in the meanwhile.

8. As per the calculation made by the plaintiffs in the plaint, the defendant is liable to pay the plaintiffs in toto a sum of Rs.1,02,76,128, which includes the principal amount of Rs.94,00,000/- and a sum of Rs.8,76,128/- towards interest calculated at 18% per annum on the said principal amount, for the period from 08.03.2020 till 13.09.2020. Hence, the plaintiff has filed the suit for the reliefs stated supra.

9. The defendant was set ex-parte by this Court on 19.08.2021 owing to his non-appearance before Court and there was no representation either in person or through a counsel, on 16.07.2021, 15.06.2021 and 05.07.2021. It appears that the defendant is not interested in prosecuting the case.

10. During the course of trial, the second plaintiff was examined as P.W.1 and marked Exs.P-1 to P-7. P.W.1/second plaintiff, in her evidence, reiterated the averments made in the plaint. The following are the details of said exhibits:

Exhibit Number	Date	Description of the exhibit
Ex.P-1	27.04.2017	Photocopy of the legal opinion furnished by the

Exhibit Number	Date	Description of the exhibit
		defendant to the plaintiffs
Ex.P-2	06.07.2019	Original hand-written temporary acknowledgement issued by the defendant to the plaintiffs, with clean typed copy in Tamil
Ex.P-3	27.07.2020	Legal notice issued by the plaintiffs through their counsel to the defendant
Ex.P-4	28.07.2020	Original acknowledgement card for the above legal notice, received by the defendant
Ex.P-5	03.08.2020	Original reply sent by the defendant to the plaintiffs' counsel in the hand-written form in Tamil, with clean typed copy
Ex.P-6	14.08.2020	Re-joinder issued by the plaintiffs' counsel to the defendant
Ex.P-7	17.08.2020	Original acknowledgement card for the above re-joinder received by the defendant

11. Even though by order dated 21.12.2020 in Appln.No.2284 of 2020 in C.S.No.257 of 2020, this Court directed the defendant to furnish security for the suit claim on or before 27.01.2021, the defendant has not come forward to furnish security.

12. Taking into consideration the averments made in the plaint, and also taking into account the oral and documentary evidence and also on

perusing the entire materials available on record to prove their case, this Court is satisfied that the plaintiffs have made out a case for decreeing the suit as prayed for.

13. Accordingly, the suit is decreed as prayed for. No costs. Consequently, A.No.2284 of 2020 is closed.

01.09.2021
(1/2)

Speaking Order: Yes

Internet: Yes

cs

Witnesses examined on the side of plaintiff:--

P.W.1 Mrs.Uma Ramesh (second plaintiff)

List of documents marked on the side of plaintiffs:--

Exhibit Number	Date	Description of the exhibit
Ex.P-1	27.04.2017	Photocopy of the legal opinion furnished by the defendant to the plaintiffs
Ex.P-2	06.07.2019	Original hand-written temporary acknowledgement issued by the defendant to the plaintiffs, with clean

Exhibit Number	Date	Description of the exhibit
		typed copy in Tamil
Ex.P-3	27.07.2020	Legal notice issued by the plaintiffs through their counsel to the defendant
Ex.P-4	28.07.2020	Original acknowledgement card for the above legal notice, received by the defendant
Ex.P-5	03.08.2020	Original reply sent by the defendant to the plaintiffs' counsel in the hand-written form in Tamil, with clean typed copy
Ex.P-6	14.08.2020	Re-joinder issued by the plaintiffs' counsel to the defendant
Ex.P-7	17.08.2020	Original acknowledgement card for the above re-joinder received by the defendant

Witnesses examined on the side of defendants:-- Nil

Documents marked on the side of defendants:- Nil

01.09.2021

(2/2)

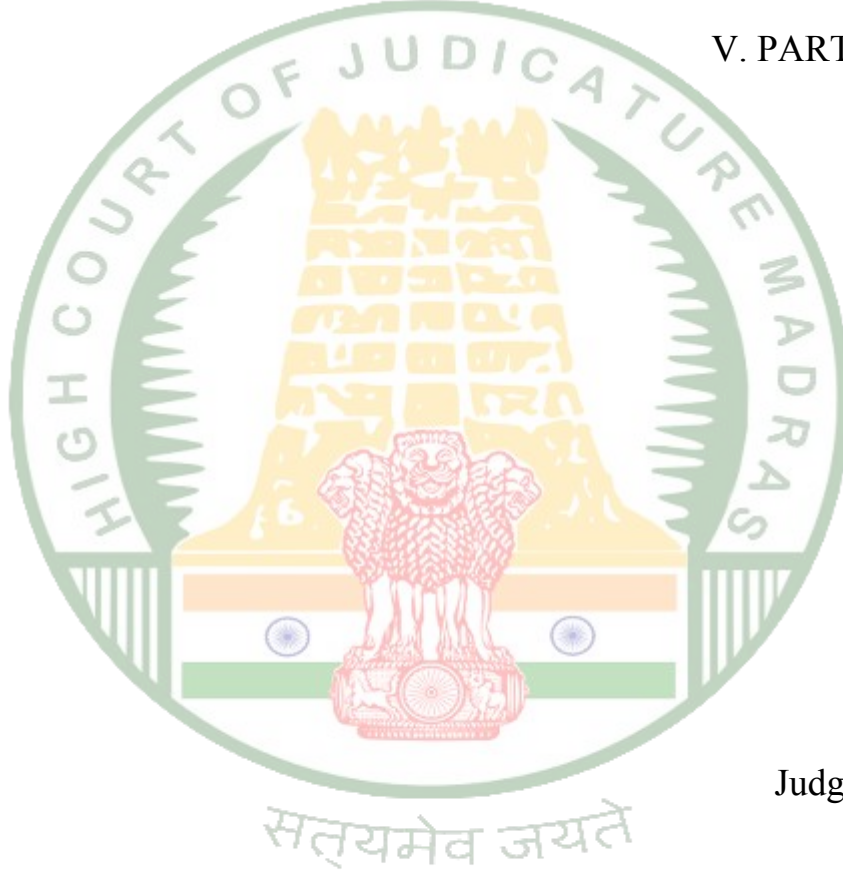
Speaking Order: Yes

Internet: Yes

cs

To

The Record Keeper, Original Side Records Section, High Court, Madras.



V. PARTHIBAN, J

CS

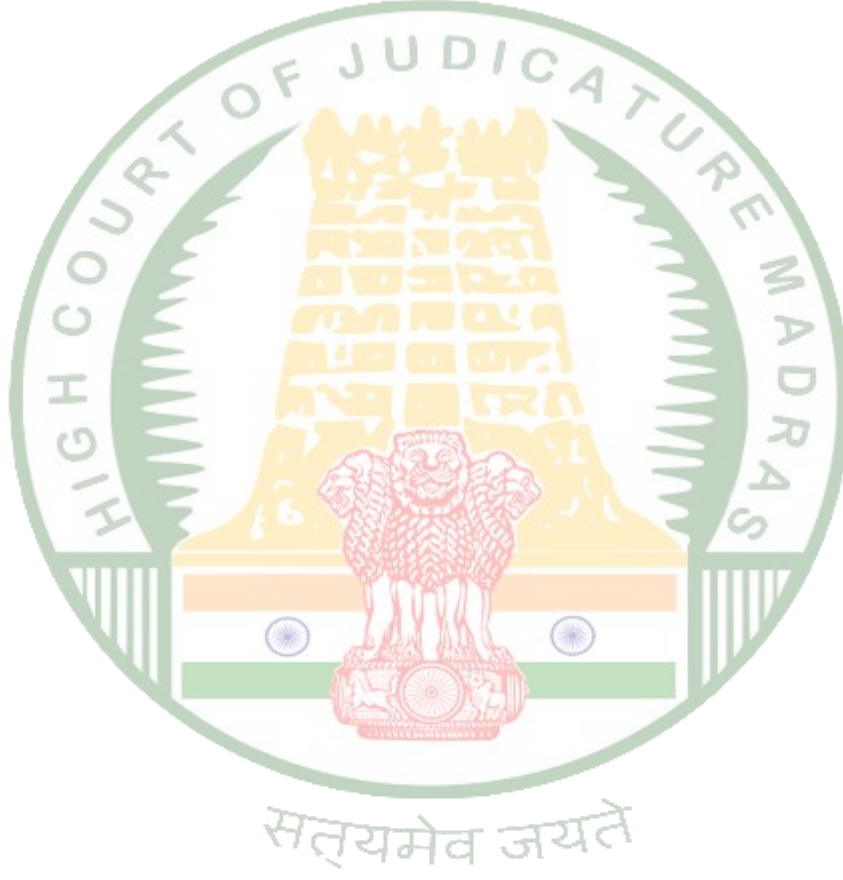
Judgment

in

C.S.No.257 of 2020

WEB COPY

01.09.2021



WEB COPY