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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.09.2021
PRONOUNCED ON : 06.10.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.465 of 2014 & M.P.No.1 of 2014

M/s V.G.P. Housing Private Ltd.,
Represented by its Director
VGP Square, Saidapet,
Chennai - 600015

...Appellant/Defendant

Vs.

1.Dr.D.Haja Mohideen
S/o Dr.Diwan Mohideen

2.Dr.Mumtaz
W/o Dr.D.Haja Mohideen

...Respondents/Plaintiffs

PRAYER: Appeal Suit filed under Section 96 of the Code of Civil Procedure against the judgement and decree dated 28.11.2013 made in O.S.No.10052 of 2010 on the file of the learned VI Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.Suresh
for M/s Shivakumar and Suresh

For Respondent: Mr.V.Ramesh
for Mr.T. Thiyagarajan

JUDGEMENT

The defendant in a suit for recovery of money is the appellant before this Court. The appeal is filed challenging the Judgment and Decree of the VI Additional Judge City Civil Court, Chennai in O.S.No. 10052 of 2010. It is necessary to briefly allude to the facts which gives rise to the above appeal, in order to appreciate the objections of the defendant/appellant to the Judgment and Decree under appeal.

2. The suit is filed by the respondent herein for recovery of a sum of Rs. 2,03,000/- being the amount lying with the



defendant together with interest at 24% per annum from the date of payment till date of filing of the plaint totaling a sum of Rs.7,07,928.63/- and to direct the defendant to pay the interest at 24% from the date of the plaint till the date of realization along with a sum of Rs.15,00,000/- towards damages.

3. The grievance of the respondents was that they had booked a plot of land being promoted by the appellant herein at Bangalore "VGP SAMJI TOWN" on 28.01.1997. The respondents were allotted plot No.52 measuring an extent of 1200 Sq.ft. for a total value of Rs. 4,20,000/-. The respondent over a period of time had paid a sum of Rs. 2,03,000/- towards the value of the property in installments. The respondent had later requested the appellant to allot a site measuring 2400 Sq.ft as against the extent of 1200 Sq.ft. already allotted to them for a total cost of Rs. 5,40,000/-.

4. The respondent faced a delay in getting the site at Bangalore, and therefore, they requested the appellant to offer an alternate site at Coimbatore. The appellant had valued the site at Rs. 1,20,000/- per ground. Even this did not materialize and the parties had exchanged letters. Ultimately the respondent had requested the appellant to allot the property at Bangalore reiterating their contention that the appellant had with them a sum of Rs. 2,03,000/- belonging to the respondent which they had paid towards the purchase of the plot No.52 earlier. On 15.07.2005, the defendant sent a reply in which they had contended that as per their records only a sum of Rs. 1,43,000/- was available and not Rs. 2,03,000/- as stated by the respondent. Thereafter, the respondent had visited the appellant's office and had furnished the details to show that they had paid a total sum of Rs. 2,03,000/-. However, there was no response from the appellant. Therefore, on 02.01.2008 the 1st respondent herein had addressed a letter to the appellant stating that they are ready to pay a sum of Rs. 3,37,000/- being the balance due for the plot Nos. 122 and 123. Though the said letter was received by the appellant they had not responded to the same.

5. The respondent would further contend that by trusting the words of the appellant they had lost a vital chance of booking a house site at Bangalore from some other person and now the price of the land has sky rocketed and the plaintiff is not in a position to afford such a huge sum and therefore, they were entitled to damages, hence the suit.



6. The appellant herein filed a written statement inter alia contending that the suit was squarely barred by limitation. The respondents are primarily responsible for the delay since they had not confirmed the allotment made by the appellant in respect of the plot No. 122 and 123. Thereafter, by letter dated 15.02.1998 the respondent evinced an interest to shift to Coimbatore. By their reply dated 23.12.1998 the defendant had confirmed the availability of a site and sought for a confirmation from the respondent. Even to this the confirmation was not given in time and on the contrary by letter dated 25.02.1994 the plaintiff had sought for 4 plots of the same price structure. The appellant was not willing for the same and had communicated it to the respondent.

7. The appellant would further submit that as per their records only a sum of Rs. 1,43,000/- has been paid and not Rs. 2,03,000/- as contended by the respondent. They would further contend that the money which is with them was only an advance payment. Even as early as in the year 2005 the appellant was ready to register the plot, however, the respondent did not come forward to confirm his acceptance. Without fulfilling their obligations the respondents have rushed to Court and that too after the expiry of the period of limitation, the appellant therefore sought for a dismissal of the suit.

8. The VI Additional Judge City Civil Court, Chennai on perusing the pleadings of either side had framed the following issues:

- (i) Whether the plaintiffs are entitled to the suit claim as prayed for?
- (ii) Whether the plaintiffs are entitled for damages?
- (iii) Whether the suit is barred by limitation?
- (iv) Whether the plaintiffs committed default in paying the balance sale consideration and filed to perform their part of Contract?
- (v) To what other reliefs the plaintiffs are entitled to?

9. After the framing of issues the parties to the suit had proceeded to trial. The 1st respondent examined himself as P.W.1 and marked Ex.A-1 to Ex.A.10. On the side of the appellant neither was oral evidence let in nor documents marked. The learned Judge extracted the case of both the parties and by a 2 paragraph Judgment decreed the suit. Aggrieved by the said Judgment and Decree the appellant is before this Court.



Points for consideration:

10. The points for consideration, on the basis of the argument adduced before this Court, are as follows:

- a) Whether the suit is barred by limitation?
- b) Whether the appellants are liable to pay money to the respondents?

Submissions:

11. Mr. Suresh appearing on behalf of the appellant would contend that the suit filed in the year 2009 was not maintainable since the parties had granted the allotment in favour of the respondent in the year 1997 and the last correspondence in which the appellant had acknowledged their obligation was on 15.07.2005. He would therefore submit that the suit being one for recovery of money, the suit ought to have been filed on or before 14.07.2008, therefore, the present suit filed in the year 2009 is barred by limitation.

12. He would further submit that the documents filed on the side of the respondent would clearly demonstrate the fact that the appellant has been ready at every stage to move forward with the agreement, however, the delay is only on the side of the respondents who had not given the confirmation in time. With regard to the contents of the letter dated 15.07.2005, having failed to perform their part of the obligation directed under this letter the respondent cannot seek to mulct the liability on the appellant herein. He would also submit that as per their records it was only a sum of Rs. 1,43,000/- which was due and owing from the appellant to the respondent.

13. He would further submit that the judgment under appeal is a non-speaking one. Though the learned Judge had framed the issues with reference to the limitation, there is no finding in this regard. In fact, a perusal of the Judgment would clearly show that none of the issues framed have been answered. The learned Trial Judge has mechanically proceeded to decree the suit, therefore, he has sought to have the appeal allowed and the Judgment and Decree of the Trial Court is set aside.

14. Per contra, Mr. V.Ramesh. learned counsel for the respondent would submit that the limitation would start ticking only from the date of the refusal and in the instant case there is no refusal and therefore, the period of limitation is saved. He would submit that the limitation would start only from the year 2008. He would further submit that the appellant is holding the amount in trust and therefore it is only from the date of



the refusal that limitation would commence and in the instant case, the suit is well within the period of limitation. He would place reliance on paragraph 9 of the Judgment under appeal in support of his contention that the suit is not barred by limitation.

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15. Heard the learned counsel and perused the records.

16. The contract between the appellant and the respondents admittedly had taken place in the year 1997. The documents filed on the side of the plaintiff would indicate how respondents had been changing the preference of the allotment of plots between the years 1997 to 1999. On 15.03.1999 under Ex.A-6 the appellant had communicated to the respondents that the value of the 3 plots of land at Coimbatore worked out to a sum of Rs.. 2,16,000/- and they had also acknowledged the receipt of the sum of Rs. 2,03,000/- from the respondent. The appellant had also requested the respondent to confirm immediately about their preference for having the 3 plots allotted to them. There is no document filed to show the reply of the respondent to this letter.

17. As per Ex.A-6, the balance that was payable by the respondent for the 3 plots was only a sum of Rs. 13,000/-. The appellant has once again contended vide their letter dated 15.07.2005 (Ex.A-7) that their records show only a sum of Rs. 1,43,000/- as outstanding to the credit of the respondents in their accounts as against the sum of Rs. 2,03,000/- claimed by the respondent. The letter called upon the respondent to clear the amount outstanding immediately. The respondent have not filed any document to show their response to their letter. The contention of the appellant that only a sum of Rs. 1,43,000/- stood to the credit to the respondent in their records is totally contrary to the contention of the appellant in Ex.A.6, wherein they have confirmed the receipt of a sum of Rs. 2,03,000/-. After this letter dated 15.07.2005 there has been a deafening silence on the part of the plaintiff till the month of January 2008 when they had dashed off a letter dated 02.01.2008 (Ex.A-8) calling upon the appellant to allot one ground (2400 Sq.ft.) at Bangalore and reiterating their contention that the appellant had a sum of Rs.2,03,000/- with them and they were willing to pay the balance amount of Rs. 3,37,000/- within 3 days. In this letter there is also a statement that the last of the communication from the appellant herein was on 15.07.2005. After this letter the suit has been filed only on 11.02.2009. Therefore, it is clear that the same has been filed beyond the period of 3 years from the date on which the appellant had last



communicated to the respondent asking them to clear their outstanding immediately.

18. The contention of the appellant that limitation would start ticking from the date of the refusal is without any basis. The suit is one for recovery of money, admittedly the contract had been entered into in the year 1997 and the last of the communication with reference to the negotiation between the parties and the acknowledgment of liability was the letter dated 15.07.2005. The respondents have not filed copies of their response to any of the letters of the appellant which has been marked as Ex.A-3 to Ex.A-7.

19. From a reading of Ex. A.8 it is also clear that post 2005 there has been no communication from the appellant. It is the case of the respondent in the said letter that after the receipt of the letter dated 15.07.2005, (Ex.A-7) the appellant had assured that the registration would be completed at an early date. However there is nothing to prove the said contention. In the absence of such proof it is clear that the time for filing the suit started ticking from 15.07.2005. Therefore, the suit filed in the year 2009 is clearly beyond the period of limitation. Unfortunately, the learned Judge despite framing the issue has not rendered any finding on the same, the Judgment is silent in this regard. Therefore, the points for consideration is answered in favour of the appellant.

20. Accordingly, this appeal suit is allowed. The Judgment and Decree of the Trial Court is set aside on the ground that the suit is barred by limitation. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

The VI Additional Judge,
City Civil Court, Chennai.



Copy to

The Section Officer
VR Section
High Court, Madras 104.

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+1 CC to Mr.T. Thiyagarajan, Advocate sr 52673.

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M.P.No.1 of 2014

SSV(CO)
SP(25/11/2021)