

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.07.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Application No.2520 of 2020
in
C.S.No.84 of 2020

1. M.Selva Ganesan, Son of Late Mariappa Chettiar
2. Mrs.Hema Janaki, Wife of Late M.Bala Govindan

.. Applicants/defendants

Vs.

1. L.Satishkumar, Son of Late Lakshmipathy
2. V.Rupa, Wife of L.Satishkumar

.. Respondents/plaintiffs

Application filed and Judge's Summons issued under Order XIV Rule 8 of the Original Side Rules (O.S. Rules) of Madras High Court, read with Order VII Rule 11 of the Civil Procedure Code (CPC) read with Section 151 of CPC, praying to reject the plaint filed by the respondents/plaintiffs in C.S.No.84 of 2020 on the file of this Court with exemplary costs.

For applicants : Mr.Ravi Kiran

For respondents: Mr.S.Shanmugasundaram

ORDER

The applicants are the defendants in the suit filed before this Court in C.S.No.84 of 2020. The respondents herein are the plaintiffs.

2. The said suit has been filed by the respondents/defendants for the following reliefs:

a. to direct the defendants to execute and register a sale deed in respect of the schedule mentioned property to the plaintiff on depositing the balance sale consideration of Rs.1,43,64,997/- in the court to the credit of the above suit, within a date to be fixed by this Court and in default thereof, this Court may execute and register the sale deed in favour of the plaintiff, in alternative,

b. to direct the defendants to refund the advance amount of Rs.41,35,003/- with interest at the rate of 18% on the advance amount from the date of agreement till the date of plaint i.e. Rs.13,31,470/- along with future interest at the rate

of 18% from the date of plaint till the date of realisation.

c. to grant permanent injunction restraining the defendants their men, agents, subordinates or any other person claiming under her from alienating or encumbering the suit schedule property in any manner.

3. The present application has been filed by the defendants for rejection of the plaint. According to the applicants/defendants, the sale agreement dated 26.02.2018, which is sought to be enforced in the suit, is an unregistered agreement, and therefore, the suit which had been premised on such agreement, is not maintainable.

4. The sale agreement was entered into between the respondent/plaintiff and first applicant/first defendant and the Late husband of the second applicant/second defendant. According to the applicants/defendants, the sale agreement, dated 26.02.2018, has ceased to exist by virtue of the wilful default by the respondents/defendants, as the

time was the essence of the contract in terms of the conditions of sale agreement.

5. It is also the case of the applicants/defendants that, the sale agreement is only between the respondent/plaintiff and the first applicant, together with the second applicant/second defendant's late husband and such, the second applicant herein is not a party to this agreement, and therefore, the suit itself is not maintainable.

6. As far as the time is the essence of the contract is concerned, it was averred that the first plaintiff did not take any steps to perform his part of the contract, and therefore, the agreement of sale has become unenforceable in a Court of Law.

7. The applicants/defendants further state that there was also a loan transaction between the second respondent/second plaintiff and the second applicant/second defendant, wherein Rs.29,35,003/- had been lent as loan by the second respondent/plaintiff. The transaction was only as that of a

lender and borrower and therefore, the question of suit for specific performance on the basis of the said loan transaction did not arise at all and hence, the suit is not maintainable on this ground also. It is also further averred in the affidavit filed in support of the application that, inclusion of second respondent herein, in the suit, is erroneous, as she was never a party to any of the discussion/transaction relating to the sale agreement. It is also averred that Class-I heirs (i.e. as per the Hindu Law) of the deceased husband of the second applicant/second defendant, had not been made as parties, and therefore, the suit is to be rejected for non-joinder of parties.

8. In response to the application, counter affidavit has been filed on behalf of the respondents/plaintiffs. The counter affidavit contains the details of the transactions entered into between the plaintiffs and the defendants. The defendants, having taken money as advance amount of Rs.12,00,000/- (Rupees twelve lakhs only) from the plaintiffs, cannot now conveniently and cleverly plead that the agreement is not a registered document, and therefore, the same is not enforceable in law. The original party to the sale agreement, i.e. Mr.Bala Govindan, being the husband of the

second applicant, fell sick and he was in Coma stage for a considerable period of time and in those circumstances, the second applicant/second defendant approached both the plaintiffs and sought loan for the medical treatment for her ailing husband. Taking note of the pitiable situation, the plaintiff had lent Rs.29,35,003/- to the second applicant/second defendant with the understanding and the same is to be adjusted as part sale consideration. In order to wriggle out of the sale agreement, it is now being pleaded that the loan given to the second defendant is a separate transaction and not part of sale consideration.

9. It is further stated in the counter affidavit that the plaintiffs have paid sums of Rs.12,00,000/- and Rs.29,35,003/- in a total sum of Rs.41,35,003/- as advance amount of the sale consideration of Rs.1,85,00,000/- to the defendants herein and the deceased husband of the second defendant.

10. According to the respondents/plaintiffs, there is no wilful default on the part of the plaintiffs, as made out in the application for rejection of

the plaint, and only the defendants committed wilful default failing to perform their part of the contract by not handing over the vacant possession of the subject property by vacating the tenants living in the property. As per the agreement, the vacant property has to be handed over to the plaintiffs which has not been complied with by the defendants.

11. As far as the second defendant being made a party in this case, is concerned, it is stated that when the husband of the second defendant was sick, it was the second defendant who approached both the plaintiffs for money for the treatment of her late husband and now she is pleading as if that she has nothing to do with the transactions.

12. Insofar as the issue raised for rejection of the plaint, is concerned, the same is on the ground of mis-joinder/non-joinder of parties and that is not the ground on which the suit is to be rejected under Order 7 Rule 11 of the Civil Procedure Code (CPC).

13. The loan transaction was entered into with the wife of the said

Bala Govindan by way of abundant caution, as she was not signatory to the sale agreement, it was agreed between the parties to treat the loan amounts as part-payment towards the final sale consideration.

14. The learned counsel who appeared for the respective parties, reiterated the above facts.

15. The learned counsel for the applicants/defendants submitted that the suit suffers from various legal infirmities and therefore, the plaint has to be rejected for the reasons set-forth therein. On the other hand, the learned counsel for the respondents/plaintiffs submitted that the reasons as set-forth in the affidavit filed in support of the application for rejection of the plaint, cannot be the basis for rejection of the plaint under Order 7 Rule 11 CPC. The various averments contained in the affidavit filed in support of the application, are matters to be tried at the time of trial, and the suit cannot be rejected at the threshold on the flimsy pleadings of the applicants/defendants.

16. This Court considered the submissions made by the learned counsel appearing for the respective parties and perused the pleadings and the entire materials available on record.

17. At the outset, the reasons and the grounds pleaded in the rejection application by the applicants/defendants are three fold, one is that the sale agreement is not a registered document. The respondents/plaintiffs have clearly averred in the counter affidavit that the subject property was mortgaged by way of home loan with M/s.Reliance Home Finance Limited and therefore, the sale agreement could not be registered. Further, the advance paid under the sale agreement by the respondents/plaintiff was only to partly clear the housing loan. Therefore, the stand taken by the applicants/defendants has to be discountenanced as being malicious and self-serving.

18. Secondly, with regard to the pleading that time was the essence of contract, no specific details have been furnished with any material support as to how the sale agreement ceased to exist by the so-called default on the

side of the respondents/plaintiff. In any event, such a contention is a mixed question of fact and law, and therefore, such contention cannot be the basis for rejecting the plaint at the threshold.

19. Thirdly, about mis-joinder or non-joinder of parties, this ground has also been met in the counter affidavit of the respondents/plaintiffs and also whether any party is unnecessary or necessary, can always be the subject matter of consideration in the suit.

20. This Court also finds that the averments as contained in the affidavit filed in support of the above application, appeared to be disjointed and jumbled up and the and the same do not make any coherent case for rejecting the plaint under Order 7 Rule 11 CPC. It appears that the applicants/defendants have come up with the averments which do not even remotely call for any serious consideration for rejecting the plaint filed on behalf of the respondents/plaintiffs.

21. Be that as it may. As stated above, the so-called objections raised

on behalf of the applicants/defendants have effectively been met in the counter affidavit filed by the respondents/plaintiffs.

22. It is also to be seen that, in entirety of the averments contained in the affidavit filed in support of the present application, no particular legal infirmity is pointed out worthy enough for this Court to reject the plaint in terms of the provisions under Order 7 Rule 11 CPC. It appears that the applicants/defendants have come up with the affidavit containing full of unconnected materials or with the averments which are absolutely not germane for rejection of the plaint.

23. On the whole, this Court finds that the above application is completely bereft of any legal substance and is devoid of merits.

24. Accordingly, the application filed in A.No.2520 of 2020, to reject the plaint, is dismissed. No costs.

25. Registry is directed to list the connected interim injunction

Order dated 09.07.2021 in Appln.No.2520 of 2020
in C.S.No.84 of 2020

application in O.A.No.132 of 2020 in C.S.No.84 of 2020, on 30.07.2021.

09.07.2021

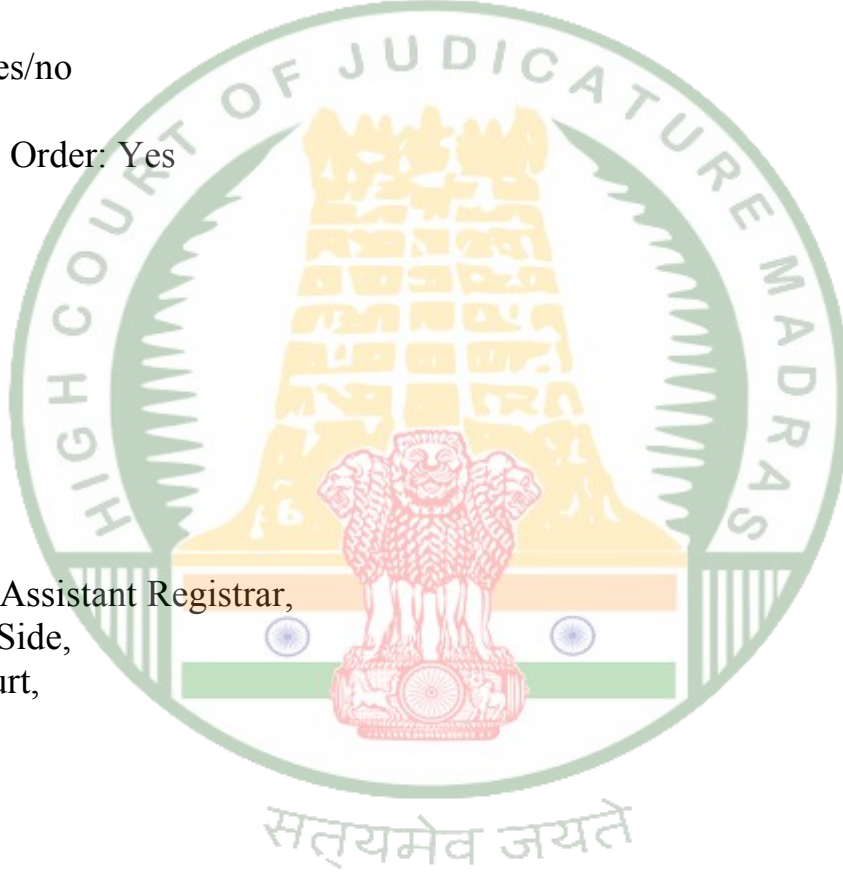
Index: Yes/no

Speaking Order: Yes

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To

The Sub-Assistant Registrar,
Original Side,
High Court,
Madras.

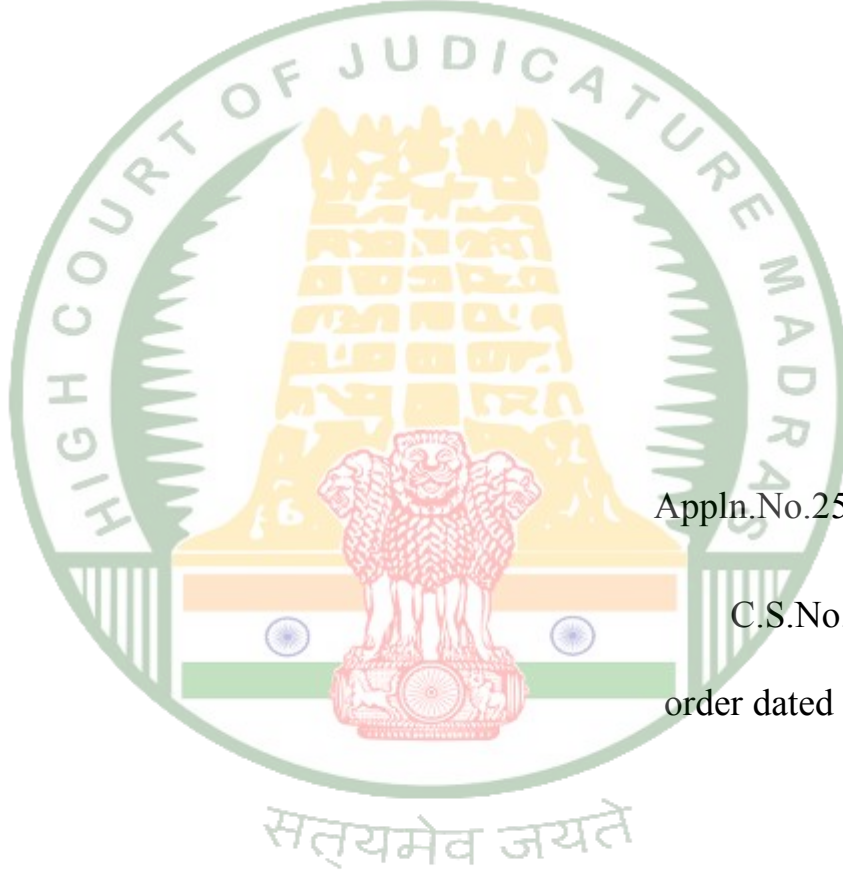


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in C.S.No.84 of 2020

V.PARTHIBAN, J

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Appln.No.2520 of 2020
in
C.S.No.84 of 2020
order dated 09.07.2021

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(Post O.A.No.132 of
2020 on 30.07.2021)