



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

A.S.(MD)No.119 of 2019

M.S.Baddiu Deen

... Appellant/Defendant

Vs.

Rev.James Jacob

... Respondent/Plaintiff

Prayer: Appeal suit filed under Section 96 of C.P.C., to set aside the Judgment and Decree dated 21.08.2018 passed in O.S.No.1 of 2015 on the file of the Principal District Judge, Theni and allow the present appeal.

For Appellants : Mr.T.Bashyam
For Respondent : Mr.Y.Jacob

J U D G M E N T

The defendant in O.S.No.1 of 2015 on the file of the Principal District Judge, Theni, is the appellant in this appeal.

2. The said suit was filed by the respondent herein for recovering a sum of Rs.12,04,822/- with interest. The case of the plaintiff is that he entered into an oral sale agreement with the defendant for the purchase of certain properties. The sale consideration was fixed at Rs.6,00,00,000/-. A sum of Rs.10,00,000/- was paid as advance. The advance amount was transferred from the plaintiff's bank account to the defendant's bank account on 27.03.2013. For certain reasons, the sale transaction could not be concluded. The plaintiff therefore wanted the money back. Since the defendant did not concede, the suit came to be instituted. The defendant filed written statement denying the suit claim.

3. The Court below framed the following issues:-

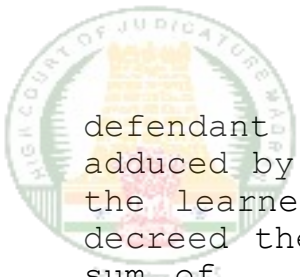
"1) Whether the alleged sale advance payment receipt dated 27.03.2013 is valid and true?

2) Whether this suit is bad for non-joinder of necessary parties?

3) Whether the plaintiff is entitled to the suit claim as prayed for?

4) To what other relief the plaintiff is entitled for? "

4. The plaintiff examined himself as P.W.1 and two other witnesses as P.W.2 and P.W.3. Ex.A.1 to Ex.A.11 were marked. The
<https://hcservices.ecourts.gov.in/hcservices/>



defendant examined himself as D.W.1. No documentary evidence was adduced by the defendant. After considering the evidence on record, the learned trial Judge vide judgment and decree dated 21.08.2018 decreed the suit by directing the defendant to pay the plaintiff a sum of Rs.10,00,000/- with interest at 9% p.a. from 28.03.2013 till the date of decree and at 6% p.a. from the date of decree till the date of realization of the amount. The suit was decreed with cost. Questioning the same, this appeal has been filed.

5. The point for determination is whether the appellant is liable to repay the amount of Rs.10,00,000/- with interest as decreed by the Court below.

6. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds.

7. Per contra, the learned counsel appearing for the respondent submitted that the impugned judgment and decree do not call for any interference.

8. I carefully considered the rival contentions and went through the evidence on record.

9. There is no dispute that a sum of Rs.10,00,000/- was paid by the plaintiff to the defendant. The amount in question was transferred through bank account. The defendant also admits receipt of the said amount. He cannot possibly deny the same. However, the defendant claimed that the plaintiff did not come forward to conclude the transaction as originally agreed within the stipulated time of five months. On the other hand, the learned counsel appearing for the respondent would point out that there were certain encumbrances and that the defendant failed to clear the same. Be that as it may, there was no written agreement between the parties which could have enabled the defendant to retain a portion of the advance amount for the default committed by the plaintiff. The sale agreement was admittedly oral. The sale transaction could not be concluded. The defendant ought to have returned the advance amount.

10. The defendant's counsel would claim that the defendant was willing to return the advance amount, but the plaintiff insisted on payment of interest. This explanation appears to be an after thought. If really the defendant was willing to return the amount, he could have simply deposited the same in the plaintiff's bank account. The defendant knew the plaintiff's bank account details. Nothing prevented him from doing so.

11. The Court below was justified in coming to the conclusion that without any justification, the defendant dragged on the proceedings. The defendant had not established any default on the plaintiff. The Court below correctly decreed the suit based on the



oral and documentary evidence adduced before it. No case has been made out for interference. There is no merit in this appeal. This appeal suit is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

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// True Copy //

/ /2021

Sub Assistant Registrar (CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Principal District Judge,
Theni.

Copy to

The Record Keeper, V.R.Section, (2C)
Madurai Bench of Madras High Court, Madurai.

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DKS (CO)
KB (22.09.2021) 3P 4C