



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

A.S.(MD)No.212 of 2017

WEB COPY

1.Thingalkannan

2.Manjula

... Appellants / Defendants

-Vs-

O.Sambandamurthy

... Respondent / Plaintiff

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code, against the judgment and decree dated 08.12.2016 passed in O.S.No.57 of 2014 on the file of the II Additional District and Sessions Judge, Thanjavur.

For Appellants

: Mr.G.Karnan

For Respondent

: Mr.P.Vadivel

JUDGMENT

The defendants in O.S.No.57 of 2014 on the file of the second Additional District and Sessions Judge, Thanjavur, are the appellants herein.

2. The plaintiff is an engineering contractor. The defendants are husband and wife. The wife is the owner of the land. The husband / first defendant approached the plaintiff for constructing the suit building. A written agreement dated 27.02.2011 was also entered into between the parties.

3. The case of the plaintiff is that he carried out the construction as per the agreement and some extra work as per mutual understanding was also done. The defendants had paid a sum of Rs.38,31,842/-. According to the plaintiff, since he had incurred extra charges under several heads and also due to increase of material cost, the defendants should pay a further sum of Rs.12,08,821/-. He issued suit notice dated 10.12.2012. Thereafter he also submitted his final bill. Since the defendants did not accept the claim of the plaintiff, the aforesaid suit came to be instituted on 30.04.2014.

4.The defendants filed their written statement. They seriously disputed the measurements claimed by the plaintiff. They also stated that the claim of the plaintiff towards escalation cost is not maintainable. Based on the divergent pleadings, the Court below framed the issue as to whether the plaintiff is entitled to a sum of Rs.12,08,821/- as prayed for. An advocate commissioner was



appointed. He took the assistance of a qualified engineer and submitted his report which was marked as Ex.C1 and Ex.C2. The plaintiff examined himself as P.W.1 and one Paramasivam as P.W.2. Ex.A1 to Ex.A12 were marked. The first defendant examined himself as D.W.1 and three other witnesses on his side. Ex.B1 to Ex.B3 were marked. After considering the evidence on record, the trial Court partly decreed the suit by the impugned judgment and decree dated 08.12.2016. The plaintiff was held entitled to a sum of Rs.3,49,021/- and the defendants were directed to pay the same within a month. 6% interest was awarded on the said sum with effect from 08.01.2017 onwards. The suit was decreed with the plaintiff's cost of Rs.1,01,995/-. Aggrieved by the same, the defendants have filed this appeal. The plaintiff had not chosen to file any cross appeal.

5. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds. He also filed a calculation memo. He pointed out that the trial Court sustained the contention of the defendants as regards the measurements. The Court below also correctly concluded that there was a difference of Rs.3,49,021/-. But instead of deducting the said sum from the amount already paid by the defendants, the trial Court chose to deduct the same from the figure given by the engineer and decreed the suit on that basis.

6. Per contra, the learned counsel appearing for the respondent / plaintiff submitted that even though the plaintiff has serious reservations regarding the actual amount awarded to him, in as much as he had not filed any cross appeal, the impugned judgment and decree may be confirmed as such.

7. I carefully considered the rival contentions and went through the evidence on record. The point for consideration is whether the impugned judgment and decree can be confirmed as such or it requires modification in the light of the findings given by the trial Court. It has already been pointed out that the trial Court appointed an advocate commissioner to inspect the suit building and to ascertain the cost of construction for the entire building. Of-course, this exercise involved taking of measurements. The advocate commissioner was assisted by a chartered contractor/licensed surveyor who was also a government approved valuer. The engineer's report is a part of Ex.C1 and Ex.C2. In the said report, the cost of construction was valued at Rs.43,19,474/- on the following basis:-

Rate specifications:

Ground floor	= 1356.26 X Rs.1300/Sqft	= Rs.17,63,138.00/-
Porch	= 212.62 X Rs.750/Sqft	= Rs.1,59,465.00/-
Cantilever Slab	= 80 X Rs.500/Sqft	= Rs.40,000.00/-
First Floor	= 1303 X Rs.1000/Sqft	= Rs.13,03,000.00/-
Balcony	= 185 X Rs.750/Sqft	= Rs.1,38,750.00/-



Rear side balcony	= 81 X Rs.750/Sqft	= Rs.60,750.00/-
Cantilever slab	=77.48 X Rs.500/Sqft	= Rs.38,740.00/-
Second Floor Area	= 83.37 X Rs.1000/Sqft	= Rs.83,370.00/-
Open Staircase		
with Handrail	= 170 X Rs.750/Sqft	= 1,27,500.00/-
Compound wall	= 100 Rft X Rs.750/Sqft	= Rs.75,000.00/-
Front Ramp	= 183.75 X Rs.300/Sqft	= Rs.55,125.00/-
Platform	= 922.12 X Rs.300/Sqft	= Rs.2,76,636.00
Water Tank & Wall Putty Work		= Rs.1,50,000.00/-
Three phase electrification		=Rs.48,000.00/-
Total		= Rs.43,19,474.00/-

The engineer was examined as D.W.3. The Court below had also approved the aforesaid report. I am therefore of the view that the details, measurement and valuation set out in the report of D.W.3 who was examined by the appellant themselves can be taken as the base parameter for testing the correctness of the impugned judgment and decree.

8. The learned counsel appearing for the appellants would point out that the plaintiff had claimed that the plinth area of the ground floor was 1520 square feet. But the engineer had pointed out that the ground floor measures only 1356 square feet. Though apparently there appears to be a huge discrepancy between the claim of the plaintiff and that of the defendant, the fact is that while the plaintiff included portico area also within the ground floor measurement, the engineer has chosen to indicate it under a separate head. The appellants who want to take advantage of the engineer's report as far as the ground floor measurement is concerned, cannot conveniently gloss over the portico measurement of 212 square feet set out in the very same report.

9. The valuation given for the portico construction is only at Rs.700/- per square feet. The appellant's counsel would point out that as per Ex.A1-agreement, portico canopy was to be constructed at the cost of Rs.500/- per square feet. I am of the view that the valuation set out in the engineer's report can be reduced by Rs.50/-. The valuation given for portico area will be as follows:-

Portico = 212 X Rs.700/sq.ft = Rs.1,48,400/-

The engineer has valued the portico construction at Rs.1,59,465/-. There has to be deduction of Rs.11,065/-. The appellants in his memorandum of grounds has not chosen to challenge the valuation given by the engineer for cantilever slab, balcony & rear side balcony. Therefore, the valuation set out in the engineer's report have to be accepted.

10.The trial Court has given a specific finding that the compound wall was not built for the entire 100 feet and that therefore, the valuation of the compound wall will have to be



reduced to Rs.56,500/-. The engineer in his report, has valued the platform works at Rs.2,76,636/-. It is beyond dispute that neither in the suit notice nor in the plaint, the plaintiff had made any claim under this head. No issue was also framed. Hence the defendants cannot be expected to traverse the said claim. I therefore have to omit the valuation for platform. The cost of construction arrived at by the engineer will have to be reduced to Rs.40,18,274/-. The defendants had already paid a sum of Rs.38,31,842/-. Therefore, the defendants have to pay the balance amount of Rs.1,86,432/-. The judgment and decree passed by the Court below is accordingly modified. This appeal is partly allowed and the appellants / defendants are directed to pay a sum of Rs.1,86,432/- with interest at the rate of 6% per annum from the date of plaint till the date of payment. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The II Additional District and Sessions Judge, Thanjavur.

Copy to

The Section Officer, (2C)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.VADIVEL, Advocate (SR-22339[F] dated 13/07/2021)

+1 CC to M/s.G.KARNAN, Advocate (SR-22453[F] dated 14/07/2021)

A.S. (MD) No.212 of 2017
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KB(17.08.2021) 4P 6C