IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

AS.No.282/2016 & CMP.NoS.19685/2016 & 2199/2022

T.S.Manohar .. Appellant / Defendant

Vs.

1.S.C.Murugan
2.M.Vasantha
3.M.Pushpalatha
4.Minor B.Durgatharani
rep.by her natural guardian &
next friend and father R.Baskaran .. Respondents / Plaintiffs

Prayer:- Appeal Suit filed under Section 96 of CPC and Order 41 Rules 1 & 2 of CPC against the judgment and decree dated 16.04.2009 made in OS.No.598/2004 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore.

For Appellant	:	Mr.S.Mukunth for M/s.Sarvabhauman Associates
For Respondents	:	Mr.T.Sirish Chowdhary for Mr.T.M.Naidu & Co.

JUDGMENT

[Judgment of the Court was delivered by S.S.SUNDAR, J.,]

(1) The defendant in the suit in OS.No.598/2004 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore is the appellant in the above Appeal Suit.

(2) The respondents in this appeal as plaintiffs, filed the suit in OS.No.598/2004 for recovery of a sum of Rs.29,23,161/- being the amount paid to the appellant/defendant under an Agreement of Sale namely, a sum of Rs.20,90,500/- and interest from the date of payment.

(3) The respondents in the plaint, averred that the defendant was the Managing Partner of the different Firms, which were doing business

under the Chit Funds Act as well as collecting deposits from public. The defendant who was also the owner of a residential layout, known as "Abbai Nagar" situate at Thadagam Road, Coimbatore, agreed to sell the suit property to the 1st plaintiff for a total sale consideration of Rs.25 lakhs. It is the specific case of the plaintiffs that the plaintiffs have also invested in the Firms which were run by the defendant and a sum of Rs.5.90 lakhs was due from the defendant to the plaintiffs on account of the transactions, the plaintiffs had with the defendant. A written Agreement was entered into between the plaintiffs and defendant on 14.03.2001. As per the Agreement, it is stated that a sum of Rs.25 lakhs should be paid to the plaintiffs out of which a sum of Rs.5.90 lakhs shall be adjusted from the amount payable by the defendant to the plaintiffs and the same was acknowledged as part of sale consideration. It is the further case of the plaintiffs that subsequently before the Agreement, a sum of Rs.6,10,000/- was paid by the plaintiffs to the defendant towards the Agreement and a further sum of Rs.3,90,500/- was also paid prior to the Agreement. Stating that a sum of Rs.5 lakhs was paid as advance under the Agreement dated 14.03.2001, the case of plaintiffs is that the defendant in all, has received a sum of Rs.20,90,500/- towards sale consideration and the entire payment was acknowledged by defendant in the sale agreement.

(4) It is admitted that several properties of the defendant including the property in respect of which the Agreement was executed by the defendant, were attached by initiating proceedings under the TANPID Act and the sale could not fructify as per the Agreement dated 14.03.2001. Since the defendant has received substantial amount of Rs.20,90,500/- towards sale consideration, the suit is laid for recovery of the said sum which was paid as part of sale consideration pursuant to the Agreement.

(5) The suit was resisted by the defendant/appellant by filing a detailed written statement disputing the claim on the ground that the agreement is false and that the defendant is not personally liable to the plaintiffs' claim. It is also stated that the Agreement was obtained by the plaintiffs by coercion as the defendant was forced to execute the same as security for the amount which was payable by

the defendant in connection with the financial business which the defendant was doing earlier. A plea was also raised by the defendant in the written statement that claim towards the amount collected by the defendant in his capacity as Managing Partner of several Firms and the Managing Partne of the Firm cannot be included in the suit as proceedings have been initiated for recovery of the amount due by way of deposits collected by the defendant from public.

(6) A reply statement was also filed repudiating the allegations made in the written statement.

(7) The Trial Court after framing an issue as to whether the plaintiffs are entitled to recovery of amount, considered all the defence raised by the defendant including the rate of interest. The Trial Court came to the conclusion that the suit agreement is a bona fide sale transaction by which the defendant had received substantial payment. Having regard to the nature of transaction and admission by producing Sale Agreement under Ex.A1, the Trial Court has observed that the plaintiffs are entitled to collect the amount which was acknowledged

by the defendant under Ex.A1-Agreement.

(8) The Trial Court went further and decided the question relating to readiness and willingness and held that the plaintiffs were always ready and willing to perform their part of contract and that the sale could not be completed because of the other proceedings initiated under TANPID Act. The defendant himself has admitted that the properties were attached and taken over for the purpose of disbursement of the sale proceeds of all assets of not only the defendant, but also the Firms. It is admitted by appellant about the settlement of several claims to investors and creditors of the defendant and the Firms in which he was the Managing Partner. Since the defendant who was examined as DW1, admitted his signature in the Agreement under Ex.A1, the Trial Court found that the agreement is proved and the defendant is liable to pay money which was paid by plaintiffs to the defendant as per terms of Ex.A1-Agreement. With regard to interest, the Trial Court found that the rate of interest @ 12% per annum is not so high and the transaction is also commercial. Therefore, the suit was decreed in favour of

plaintiffs by directing the defendant to pay a sum of Rs.29,75,475/- being the principal amount payable by the defendant to the tune of Rs.20,90,500/- plus interest @ 12% per annum from 14.03.2001. Aggrieved by the same, the defendant has filed the above Appeal Suit.

(9) This Court heard the submissions of the learned counsel for the appellant and the learned counsel for the respondents and also perused the materials placed.

(10) The learned counsel for the appellant submitted that the plea of defendant that he was not in control of the property and that he is not personally liable, has not been properly considered by the Trial Court. Learned counsel submitted that the defendant was compelled to execute the Sale Agreement dated 14.03.2001 as security and therefore, the suit for recovery of money which was stated to have been paid by plaintiffs to defendant is not maintainable. The third contention of the learned counsel for the appellant was regarding interest. It is submitted by the learned counsel that the defendant had a set back in his business and lost almost every one of his

properties. Since the defendant has settled the amount to all the borrowers with the properties he had and in the process, he had lost his assets, it is submitted that the interest should be reduced.

(11) This Court is unable to agree with any of the submissions of the learned counsel for the appellant.

(12) The learned counsel for the appellant has agreed with the findings of the Trial Court that the appellant/defendant had almost settled the entire claim of depositors and others who had invested money in the Financial Organizations/Establishments of the defendant. Merely because proceedings were initiated against the defendant and the Firms under the TANPID Act, the appellant is not absolved from his personal liability which was acknowledged by him undr Ex.A1. Having regard to the admission of the appellant/defendant in the course of evidence, the suit Agreement is held to be a genuine transaction where the appellant had acknowledged the payments. Whether there is any intention to sell the property or not, the respondents/plaintiffs' right to recover the money which was acknowledged under the Agreement by the appellant cannot be

rejected. Even if the agreement is only a security, the security is only to get the money back and by such pleading, the appellant cannot disown his liability. Having regard to the stated circumstances, this Court is unable to take a contrary view or interfere with the findings of the Trial Court. Regarding interest, this Court finds that the transaction is purely commercial and the interest awarded @ 12% per annum is very reasonable.

(13) For for foregoing reasons, this Court finds no merit in this Appeal Suit. Accordingly, the Appeal Suit stands **dismissed** confirming the judgment and decree dated 16.04.2009 made in OS.No.598/2004 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore. No costs. Consequently, connected miscellaneous petitions are closed.

[SSSRJ] [AANJ]
05.12.2022

AP
Internet : Yes

To
1.The Additional District and

Sessions Judge, Fast Track Court
No.II, Coimbatore.

2.The Section Officer
VR Section , High Court
Chennai.

S.S.SUNDAR, J.,
AND

A.A.NAKKIRAN, J.,

AP

AS.No.282/2016

05.12.2022