



A.S.No.377 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	02.12.2022
Pronounced on	14.12.2022

CORAM

THE HON'BLE MR.JUSTICE **D.BHARATHA CHAKRAVARTHY**

A.S.No.377 of 2015

1.L.Nagarajan
2.L.Sitrasenan

... Appellants

-Vs.-

1.Daisy Pandian
2.G.Thinakar
3.Vedha Srinivasan

.. Respondents

Appeal Suit filed under Section 96 of the Code of Civil Procedure to set aside the judgment and decree passed in O.S.No.8415 of 2010 on the file of the learned II Additional City Civil Judge, Chennai dated 05.02.2015 and allow the above appeal.

For Appellants :Mr.Adinarayana Rao
For Respondents :Mr.S.Thankasivan
for Mr.T.K.S.Gandhi, for R1
R2 and R3 – Given up.



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JUDGMENT

This appeal suit is filed against the judgement and decree dated 05.02.2015 in O.S.No.8415 of 2010 passed by the II Additional City Civil Court, Chennai, whereby the suit filed by the plaintiff for recovery of a sum of Rs.16,60,868/- and for the rendition of accounts was partly decreed by directing the defendants 1 to 3 to pay to the plaintiff a sum of Rs.16,60,868/- along with future interest at the rate of 6% per annum while dismissing the suit in respect of the relief of rendition of accounts.

2. The case of the plaintiff is that her husband namely *Koil Chitra Pandian*, first defendant/*L.Nagarajan*, second defendant/*Sitrasenan*, third defendant/*Thinakar* jointly carried on business of sale of vegetables and fruits, etc., in the name and style “Ashtalakshmi Kaikani Angadi”. During the course of the said business, they purchased the suit schedule property jointly *vide* sale deed dated 14.07.2004, in which the plaintiff's husband, the first defendant and the second defendant had a share of 27.5% each and third defendant held the balance of 17.5% share. The said property was purchased after taking loan from REPCO Home Finance Limited. It was



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decided by them that they would carry on with the business and from profits arising out of the business, the mortgage loan with the bank would be paid back.

3. While so in the year 2006, the plaintiff's husband was about to leave for Italy and therefore by a registered settlement deed dated 15.11.2006, he settled his share in the suit scheduled property to and in favour of the plaintiff. While so on 04.04.2007 for loan purposes, the plaintiff executed a General Power of Attorney, which was duly registered at the Office of the Sub-registrar, Adyar, as Document No.897 of 2007 in respect of her 27.5% share constituting the first defendant as her lawful Power of Attorney. Thereafter representing that the defendants have decided to sell the property, the first defendant handed over a cheque for Rs.4,00,000/- on 05.09.2007.

4. During June 2008, when the plaintiff visited the Income Tax Department office to file the returns, she came to know that the said property has been sold for a total sale consideration of Rs.1,31,00,000/- and as such the plaintiff was called upon to pay a huge amount of income tax



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arrears. Thus, she came to know that the property has been sold and the business has been wound up and the first defendant without any rendition of accounts has taken away the assets, which were totally valued at Rs.30,00,000/-. The first, second and third defendants had totally concealed the profit of Rs.91,00,000/-. As per the sale deed dated 31.08.2007, a total sum of Rs.56,92,515/- was paid as loan repayment to REPCO Home Finance Limited and the balance sum of Rs.52,46,617/- was retained by the first defendant towards the share of the plaintiff, his own share and that of the third defendant. Therefore, the plaintiff caused a legal notice dated 01.07.2008, calling upon the defendants to pay her share of Rs.20,60,868/- after deducting Rs.4,00,000/-, which was already paid. To the said legal notice, a reply notice was issued alleging that Rs.8,00,000/- had already been paid and that no other amount is payable. The particulars in the reply notice are false and therefore the present suit.

5. The suit is resisted by the first defendant by filing a written statement, in which it is stated that the suit property was originally purchased for a sum of Rs.45,35,100/-. Towards the purchase, the plaintiff's husband did not contribute, but only borrowed a sum of Rs.16,00,000/-



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from REPCO Home Finance Limited and the said loan amounts were also paid only from the income from the business. The plaintiff's husband had only invested a sum of Rs.5,00,000/- in the business. Therefore, after considering the entire accounts relating to the business, the plaintiff's husband agreed for a sum of Rs.8,00,000/- as full and final settlement and the same was paid as Rs.4,00,000/- by way of cheque on 05.09.2007 and Rs.4,00,000/- by way of cash on 27.04.2007. Therefore nothing further is payable to the plaintiff and thus prayed for dismissal of this suit. The plaintiff is in full knowledge about the sale of the property and as a matter of fact the present suit is filed two years after the sale. Therefore it is prayed that the suit be dismissed.

6. The second defendant filed a separate written statement and contested the suit by stating that as far as the second defendant is concerned, he owned a share of 27.5% in the property and he obtained loan for purchasing the property from REPCO Home Finance Limited, thereby effectively supporting the case of the first defendant. The third and fourth defendants remained ex-parte. On the strength of the said pleadings, the trial Court framed the following issues:



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“1. Whether the plaintiff is entitled to the suit claim as prayed for ?

2. Whether the suit is bad for non-joinder of a necessary party namely Mr.A.Koil Chitra Pandian ?

3. Whether there was an agreement to pay a sum of Rs.8,00,000/- to the plaintiff in full and final settlement ?

4. To what other reliefs, if any, is the plaintiff entitled to ?”

7. On the said issues, the parties let in evidences. The plaintiff examined herself as PW1 and exhibits Ex.A1 to Ex.A12 were marked on behalf of the plaintiff. The first defendant examined himself as DW1 and exhibits Ex.D1 to Ex.D8 were marked.

8. Thereafter the trial Court proceeded to consider the case of the parties and by the judgment dated 05.02.2015 found that the suit is not bad for non-joinder of the plaintiff's husband A.Koil Chitra Pandian as party in as much as the plaintiff is the owner of the property and she had constituted the first defendant as the Power of Attorney Agent.



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9. The trial Court then found that when admittedly the plaintiff's husband and the others were doing a joint business, they purchased the property and expressly 27.5% of shares has been assigned to the plaintiff's husband and the same having been transferred in the name of the plaintiff, and the plaintiff subsequently executed a Power of Attorney in favour of the first defendant. By recitals of the sale deed, it is clear that a sum of Rs.52,46,617/- is retained by the defendants and when the second defendant, who also owns a similar share of 27.5% has been given a sum of Rs.20,60,868/-, the plaintiff would also be entitled to the same sum. The defendants have not proved that the entire sum is non payable. In fact, the plaintiff admits the receipt of sum of Rs.4,00,000/- and therefore that alone stands proved. The defendants did not prove that another sum of Rs.4,00,000/- was paid by cash and also the defendants did not prove that the plaintiff's husband did not invest any money at all while purchasing the property and that the personal loan of the plaintiff's husband was also paid only from the business. In view of the above, the trial Court held that a sum of Rs.16,60,868/- is liable to be paid by defendants 1 to 3 to the plaintiff.

10. The trial Court also held that once it is the case of the parties that



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there is nothing else in respect of the transaction of agency, then, there was no necessity for any further rendition of accounts and accordingly decreed the suit only in respect of the payment of the above mentioned sum. Aggrieved by the same, the defendants 1 and 2 have filed the present appeal suit.

11. Heard Mr.Adinarayana Rao, learned counsel for the appellants and Mr.S.Thankasivan, learned counsel for the respondents.

12. Mr.Adinarayana Rao, learned counsel for the appellants would submit that on the face of it, the plaint suffers from suppression of material facts. The plaintiff did not whisper about the fact that her husband had taken loan in respect of the purchase of the property, which has been duly proved by the defendants by marking bank statement as Ex.D8 and therefore, the plaint is liable to be dismissed. The Power of Attorney clearly mentions that it is made for the purpose of enabling sale of the property whereas the plaintiff makes a false pleading that it is for the purposes of loan. The plaintiff also suppressed the receipt of the total sum of Rs.8,00,000/-. The report of the jurisdictional police, which is marked as Ex.A12 clearly



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substantiates the payment of sum of Rs.8,00,000/- made to the plaintiff.

The said document is produced by the plaintiff as her own document. She cannot be permitted to dispute the same. She has also not filed any protest application against the findings in the said report. Therefore, it is conclusively proved that the plaintiff has received a total sum of Rs.8,00,000/- and not Rs.4,00,000/-. The plaintiff also suppressed about her income statements regarding the claim of the Income-Tax Department and the suit is liable to be dismissed on this score also. The plaintiff also sought for rendition of accounts for a period of four months only. A perusal of Ex.D4/reply notice sent by the learned counsel for the first defendant would clearly prove that no amount was due to the plaintiff as her husband's loan was fully discharged by the first defendant.

13. Mr.Adinarayana Rao, learned counsel for the appellants would submit that the plaintiff while clearly pleading in the plaint about her husband's investment, joint business, etc., miserably failed and neglected to examine her own husband, who should be the best witness. When the plaintiff had not produced the best witness to support her case, then adverse inference has to be drawn against her. The examination of plaintiff's



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husband becomes further mandatory because in many of the averments made in the plaint, the plaintiff herself admits that her husband alone knows and that she does not have personal knowledge. In that view of the matter, it is more necessary that the said A.Koil Chitra Pandian should have been examined by the plaintiff and when the plaintiff had not let in evidence, her suit is liable to be dismissed.

14. Per Contra Mr.S.Thankasivan, learned counsel for the respondents would submit that on perusing the sale deed, it would be clear that the plaintiff's case stands proved. The sale deed itself clearly mentions that a sum of Rs.52,46,617/- has been withheld by the first defendant towards his share, plaintiff's share and 17.5% share of the third defendant. While the second defendant, who is having the same amount of share of 27.5%, has been paid a sum of Rs.20,16,868/-, the plaintiff is also entitled to the same amount. Therefore the plaintiff's case is clearly and categorically proved. The first defendant is only the Power of Attorney Agent and having received the sale consideration is liable to pay to the plaintiff, who is the principal.

15. Further the learned counsel for the respondents would submit that



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the police report cannot by itself be the evidence for receipt of Rs.4,00,000/- by cash. It is incumbent of the defendants to prove the same.

When the investment is admitted, there is no necessity for the evidence of the plaintiff's husband. When the plaintiff's husband transferred the 27.5% share in favour of the plaintiff, there was no demur on the part of the defendants. On the contrary, the first defendant approached the plaintiff and obtained the Power of Attorney in his favour. The suit claim is only a share in the sale proceeds and therefore once the first defendant is admittedly a Power Agent, the amount is liable to be paid. The bank account produced as Ex.D8 does not in any manner stand as proof for the payment of amount by the first defendant.

16. The learned counsel for the respondents when taking this Court through the cross examination of DW1 would submit that, by the suggestion put forth, it is clearly seen that the amounts paid to the personal loan account of the plaintiff's husband were not established to having been paid by the defendants. Therefore he would pray that the appeal be dismissed.

17. Upon listening to the rival submissions and considering the



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materials records of the case, the following points arise for consideration

- (i) Whether the plaintiff is entitled for a sum of Rs.16,60,868/- from the defendants ?
- (ii) To what other reliefs, are the parties entitled to ?

18. It is admitted by the parties that the plaintiff had 27.5% share in the suit schedule property. She got the same by virtue of Ex.A1/settlement deed dated 15.11.2006. The execution of Ex.A2/General Power of Attorney constituting the first defendant as her agent is also admitted. Therefore, in exercise of powers conferred on him by the registered Power of Attorney dated 04.04.2007, the first defendant has sold the property by Ex.A3/sale deed in favour of the fourth defendant. As per the sale deed, the total sale consideration is Rs.1,31,00,000/- and it is just and necessary to extract the relevant covenant, which reads as follows:

**“NOW THIS DEED OF SALE OF THE HOUSE
AND GROUND WITNESSETH:**

That in pursuance of the above agreement and in consideration of the sum of Rs.1,31,00,000/- (Rupees One Crore and Thirty One Lakhs Only) paid by the Purchaser to the Vendors as follows:

Rs.50,00,000/- (Rupees Fifty Lakhs Only)



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paid by the purchaser to repco home Finance Limited by cheque 403 319 dated 14 7 2007 under instructions from the vendors

Rs.1,00,000/- (Rupees One Lakh Only)

paid to the vendors on 24.07.2007

Rs.6,92,515/- (Rupees Six Lakhs Ninety Two Thousand Five Hundred and Fifteen Only)

paid by REPCO Bank Limited to REPCO Home Finance in full discharge of the arrears of the loan amount due by the Vendors by a Cheque No.405234 dated 31.08.2007 issued by REPCO Bank Limited drawn on K.V.B., T.Nagar Main Branch, Chennai-17 on behalf of the Purchaser

Rs.20,60,868/- (Rupees Twenty Lakhs Sixty Thousand Eight Hundred and Sixty Eight Only)

paid to Mr.Chitrasenan towards his share of the sale consideration by a Cheque No.405235 dated 31.08.2007 issued by REPCO Bank Limited drawn on K.V.B., T.Nagar Main Branch, Chennai on behalf of the purchaser;

Rs.52,46,617/- (Rupees Fifty Two Lakhs Forty Six Thousand Six Hundred and Seventeen Only)

paid to Mr.L.Nagarajan towards his share of the Sale Consideration and towards the shares of the Sale Consideration of Mrs.Daisy Pandian and



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G.Thinakar who had executed a Power of Attorney in favour of L.Nagarajan by Cheque No.405236 dated 31.08.2007 issued by REPCO Bank Limited on behalf of the Purchaser drawn on K.V.B., T.Nagar Main Branch, Chennai 17 totaling Rs.1,31,00,000/- (Rupees One Crore Thirty One Lakhs Only) which sum the Vendors do hereby admit and acknowledge receipt and release the Purchaser from any further payment therefor, the Vendors do hereby grant, convey, sell, assign and transfer to and unto the Purchaser the House and Ground bearing Door No.3/1/1, Beach Home Avenue, Besant Nagar, Chennai 90”

*[**Emphasis applied**]*

19. Therefore on the face of it, it is clear that a sum of Rs.52,46,617/- has been retained by the first defendant/L.Nagarajan. It is also clear that similar share holder/Sitrasenan is paid a sum of Rs.20,60,868/-. Thus, the plaintiff is also entitled to a sum of Rs.20,60,868/-. As a matter of fact, the same is not denied by the first defendant but it is their case that in their reply notice and which is also their pleading that the plaintiff is not entitled for any further amount, stating as follows:

“11.

1. My client has remitted a sum of Rs.1,10,000/-



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towards the Tax dues to the Corporation of Chennai. The deuce had been paid in respect of property before the execution of the Sale Deed. That amount has been deducted from the shares of one Mrs.Daisy Pandiyan and Thinakar..

2. The refund of advance amount paid to the 'AIRCELL' a sum of Rs.75,000/-. The 'AIRCELL' Company had erected Towers in the property when the vacated, the advance amount repay to the 'AIRCELL' Company.

3. All the owners have agreed to sell the property through the brokers for which a sum of Rs.2,62,000/- was paid towards brokerage.

4. The Legal Fee Rs.10,000/-.

5. The cost of materials for construction and fabrication for Rs.2,75,000/- on 15.09.2007 and Rs.3,62,500/- on 09.10.2007.

6. A sum of Rs.5,00,000/- was paid towards the outstanding dues to the Traders for running a Vegetables Shop.

7. We borrowed a sum of Rs.4,00,000/- from one Mr.Krishnakumar in order to meet out business transaction. After the execution of Sale Deed, the above said loan discharged by remitting a sum of Rs.4,00,000/- to the said Krishnakumar.

8. My client had paid a sum of Rs.8,89,245/- towards "REPCO HOME FINANCE LIMITED" by way of



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installments on behalf one Mr.Thinakar and Koil Chitrapandian. That amount had been deducted from the income derived from the sale deed.

12. My client has received a sum of Rs.52,46,617/- towards his/Principles Shares out of which a sum of Rs.28,83,745/- has been remitted towards the discharge debts of your client and Thinakar. The remaining amount has been paid towards your client as follow:-

A sum of Rs.4,00,000/- paid towards your client on 25.07.2007 and another a sum of Rs.4,00,000/- by way of cheque. The similar payment also made to the Thinakar also”

20. Therefore it is the defendant's case that the sum, which is due to the plaintiff, has been discharged. In that view of the matter, burden is on the defendant to prove the same. Firstly, for the payment of Rs.4,00,000/- in cash, except for the police report in Ex.A12, there is no evidence which is produced on behalf of the defendants. As far as the payment of personal loan of the plaintiff's husband is concerned, on a perusal of the Ex.D8/bank statement by itself, it cannot be concluded that the cash deposits were made only by the defendants. The defendants have not produced any proof regarding the same in the nature of the challan and neither does the bank



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accounts reflect the deposits by the first defendant.

21. This apart, one more circumstance is that if the plaintiff's husband had not at all invested any amount and is not entitled for 27.5% share, then when he transferred his share by way of settlement deed in name of the plaintiff, who is his wife, there was no protest in any form by the first defendant, which would be the normal conduct of the parties. On the other hand, the first defendant himself gets the Power of Attorney from the plaintiff. Even when such course is adopted, at that point of time also, nothing in writing has been obtained from the plaintiff's husband. Therefore, the case of the defendants would be, relied only on oral evidence against Ex.A3/sale deed and its recitals. The defendants had therefore failed to prove the contents of the reply notice. Therefore, I hold that the plaintiff is entitled for said amount.

22. The non-examination of plaintiff's husband though could have been a relevant witness, when the plaintiff husband is not party to the suit, nothing prevented the defendant from examining him as they now need the support of his testimony and not the plaintiff's, whose case rests on



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Ex.A3/sale deed alone. Therefore, the said contention of the learned counsel is without any substance. I am in agreement to the plaintiff's averments, as if she executed Power of Attorney for loan purposes, appears to be false. The said statement is not very material to decree or to refuse the claim of the plaintiff and therefore that by itself cannot lead to the dismissal of the suit.

23. However it can be seen that the trial Court has ordered the defendants 1 to 3 to pay the plaintiff a sum of Rs.16,60,868/- whereas Ex.A3/sale deed itself clearly states that the money is in the hands of the first defendant. It is only the first defendant, who is the Power of Attorney Agent and against whom the suit is filed. Therefore, the decree can only be as against the first defendant. Accordingly, to that extent, the decree shall stand modified and the trial Court has rightly awarded the interest at the rate of 6% per annum.

24. In view of the above findings, I find the findings of the trial Court in respect of issue No.1, that the plaintiff is entitled to the suit claim as prayed for, is correct. I also uphold the findings of the trial Court that the suit is not bad for non-joinder of the plaintiff's husband/ A.Koil Chitra



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Pandian as a party. I also hold with regard to issue No.3 that defendants did not prove that there was an agreement to pay Rs.8,00,000/- as a full and final settlement. In view of the above findings, the question as to what reliefs is also answered. I am also in agreement with the trial Court that only one single transaction is involved in relation to the sale of property and once the due has been ordered to be paid to the plaintiff, there is nothing more to be discussed with regard to any further rendition of accounts as between the parties.

25. In the result, the A.S.No.337 of 2015 is partly allowed

(i) The judgment and decree of the II Additional City Civil Court, Chennai, in O.S.No.8415 of 2010 is modified as follows:

(a) The suit is partly decreed directing the first defendant to pay to the plaintiff a sum of Rs.16,60,868/- with future interest at the rate of 6% per annum from the date of the plaint till the date of realization;

(b) The second suit prayer with regard to rendition of accounts shall stand dismissed;

(c) The first defendant is also liable to pay the cost of the suit to the plaintiff;



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(ii) There will be no orders as to cost as far as the appeal suit is concerned. Consequently, the connected miscellaneous petition is also closed.

14.12.2022

Speaking
Index: Yes
Internet : Yes
nsa

To

The II Additional City Civil Judge,
Chennai.



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D.BHARATHA CHAKRAVARTHY, J.

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