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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

O.S.A.No.264 of 2018
and
C.M.P. No.19809 of 2021

1.Envee Enterprises,
by its Partner
Mrs.Sasikala Vamanan

2.Sasikala Vamanan

3.Mani Prakash

...Appellants/Defendants

.Vs.

Shankar Karikar

...Respondent/Plaintiff

Prayer: Original Side Appeal filed under Clause 15 of the Amended Letters Patent of 1865 r/w. Order XXXVI Rule 1 of the Code of Civil Procedure, 1908 against the Judgment and Decree dated 15.12.2016 in C.S. No.601 of 2009.

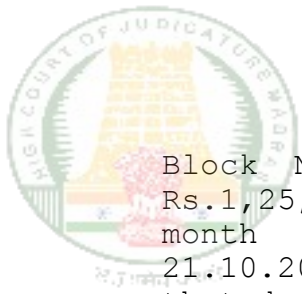
For Appellants	:	Mr.Srinath Sridevan
For Respondent	:	Mr.M.V.Swaroop

JUDGMENT

[Judgment of this Court was delivered by T.RAJA, J.]

This appeal has been directed against the impugned decree and judgment dated 15.12.2016 passed in C.S. No.601 of 2009, in and by which, the learned Single Judge decreed the suit as prayed for with costs.

2.The appellants are defendants before this Court in C.S. No.601 of 2009. The first defendant is a partnership firm and defendants 2 and 3 are its partners. It is the case of the plaintiff/respondent that the first defendant had entered into an agreement of sale with the plaintiff on 09.08.2006 agreeing to sell an extent of 2,800 sq.ft. of land in Old Door No.19/1, New Door No.23, Cenotaph Road, Chennai 600 018 in R.S.No.3856/B,



Block No.76, Mylapore Village for a total consideration of Rs.1,25,00,000/- and the sale shall be completed within one month from the date of release of the Sale Deed dated 21.10.2003. It is the further case of the plaintiff/respondent that he had paid a sum of Rs.35,00,000/- towards part of the sale consideration as per the agreement dated 09.08.2006. Though the plaintiff/respondent was ready and willing to perform his part of the contract, the defendants have been evading the execution of the sale deed on one premise or the other. While so, during December 2006, the plaintiff/respondent learnt to know that the defendants were not in possession of the property and that there was a dispute with regard to the possession between the defendants and the National Bank for Agriculture and Rural Development (hereinafter referred to as 'the NABARD'), which also resulted in a police complaint lodged by NABARD on 30.12.2006 against one J.Subramaniam and others alleging that they had trespassed into the property on behalf of the first defendant. However, the plaintiff also came to know that NABARD had filed W.P. No.549 of 2007 against the first defendant and others seeking a declaration that the land, which has been agreed to be sold by the defendants, has been earmarked as open space under the planning permit granted to them and no construction shall be raised therein and this Court, by order dated 08.01.2007 had granted an order of interim injunction restraining the respondents from in any manner modifying the use of the land in violation of the planning permission dated 21.02.1986. While so, when the plaintiff/respondent approached defendants 2 and 3 with a view to get clarifications regarding the property, there was no response from defendants 2 and 3. Therefore, the suit in C.S. No.601 of 2009 was filed by the plaintiff/respondent before this Court to pass a judgment and decree against the appellants/defendants directing them jointly and severally to pay a sum of Rs.52,34,750/- with subsequent interest at 18% per annum on the principal amount of Rs.35 lakhs and to pay the costs of the suit to the plaintiff.

3.Written statement has been filed by the defendants stating that they have received a sum of Rs.35,00,000/- as advance amount for the sale of the suit property on various dates under the terms of an agreement for sale dated 09.08.2006. It is averred by the defendants that the plaintiff has conveniently omitted to state the fact that on the date of execution of the suit agreement for sale, an appeal was pending before the Inspector General of Registration for adjudication of the payment of proper stamp duty on the sale deed dated 21.10.2003. As per the instruction of the plaintiff, the defendants have paid a sum of Rs.21,16,252/- as additional stamp duty and additional Registration fees even before the adjudication of stamp duty and got the release of the sale deed dated 21.10.2003 from the D.R.O. Since the said amount was paid by the defendants



only from the advance amount paid by the plaintiff, the plaintiff is not entitled to claim the refund of an amount of Rs.25,00,000/- paid at the time of execution of the said agreement for sale as the same was utilised for the payment of additional stamp duty and additional registration fees. With regard to the subsequent payment of Rs.10,00,000/- on various dates, the defendants stated that the plaintiff is not entitled to claim the same, since he alone committed default in completing the sale even though the defendants were ready and willing to perform the terms of the agreement of sale dated 09.08.2006.

4. On perusal of the rival pleadings of the parties, learned Single Judge of this Court, on 14.12.2011, framed the following issues and finally, by order dated 15.12.2016, has decreed the suit as prayed for by the plaintiff/ respondent:

- '1. Whether the plaintiff is entitled to claim refund of the entire advance amount of Rs.35,00,000/- paid under the suit agreement for sale with interest?
2. Whether the plaintiff has committed breach of the agreement for sale deed dated 09.08.2006?
3. Whether the defendants are entitled to deduct a sum of Rs.21,16,252/- from the amount paid by the plaintiff towards the differential stamp duty paid by the defendants in respect of the sale deed dated 21.10.2003 under which they had purchased the suit property?
4. Whether the plaintiff is entitled to a decree against the defendants for recovery of a sum of Rs.52,34,750/- with subsequent interest at the rate of 18% per annum on the principal amount of Rs.35,00,000/-?
5. To what other relief the plaintiff is entitled to?'

Challenging the correctness of the above decree and judgment, this appeal has been filed by the appellants/defendants.

5. Mr. Srinath Srideven, learned counsel appearing for the appellants/defendants submitted that when the appellants/defendants, have explained the pending lis on the property before the Registrar Office stating that due to the non payment of the stamp duty, the instrument could not be released and the appellants/defendants would not be in a position to execute the sale deed in favour of the plaintiff, only the plaintiff/respondent persuaded the appellants/defendants to clear the payment of insufficient stamp duty so that the sale deed could be executed on receipt of the balance amount. As there was a necessity arisen for the defendants appellants to come forward to pay the insufficient stamp duty, though they would have a fair chance of success before the Registration



department and that there was no need for paying any amount because the claim for insufficient stamp duty would never arise, ignoring the said claim made by the defendants appellants, the plaintiff respondent only persuaded the appellants to pay a sum of Rs.21,16,252/- as additional stamp duty and additional registration fees even before the adjudication of stamp duty and to release the sale deed so that the subsequent sale deed could be executed in favour of the plaintiff respondent. Therefore, when the respondent plaintiff persuaded the appellants defendants, in spite of the fact that a fair chance of success before the Registration Department to get and release the sale deed, without paying any amount, having taken a stand that he would be responsible for the payment of insufficient stamp duty, now he is not entitled to ask for the entire money. Secondly, when there was no commercial transaction, the judgment passed by the learned Single Judge in favour of the plaintiff, decreeing the suit as prayed for with costs is un-fair and un-justified.

6. Heard the parties on either side. This Court raises the following issue for determination:

Whether the findings and conclusions suffer from errors?

7. The claim made by the appellants is that only on the frequent persuasion made by the respondent plaintiff, the appellants defendants had paid and wasted a sum of Rs.21,16,252/- as additional stamp duty and additional registration fees even before the adjudication of stamp duty, so that the subsequent sale deed could be executed in favour of the plaintiff respondent is far from truth. Had it been so, the appellants defendants would have persuaded back the respondent plaintiff to wait for some reasonable time and in the meanwhile, they should have given a detailed reply before the Registration department mentioning the fact that on what basis, the claim made by the registration department to pay the additional stamp duty and additional registration fees was unfair. But, no such efforts were taken and no such explanations were made as a part of the pleadings before the learned Single Judge or before us.

8. A perusal of the written statement filed by the defendants would show that they have received a sum of Rs.35,00,000/- as advance amount for the sale of the suit property on various dates under the terms of an agreement for sale dated 09.08.2006. Therefore, the facts admitted as per Section 58 of the Evidence Act need not be proved. In this regard, it is relevant to refer Section 58 of the Evidence Act as under:

'58. Facts admitted need not be proved - No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or



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which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.'

9.A perusal of the above provision shows that the admitted facts need not be proved and in such circumstances, the Court may, in its discretion, based on the facts admitted, is bound to decree the claim as per Order XII Rule 6 of Civil Procedure Code, which is extracted as under:

6.Judgment on admissions - (1)Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other questions between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.'

10.A perusal of the above provision shows that the Court, may, at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other questions between the parties, make such order or give such judgment as it may think fit, having regard to such admissions. In the present case, when in the written statement filed by the defendants, they have admitted that they have received a sum of Rs.35,00,000/- as advance amount for the sale of the suit property on various dates under the terms of an agreement for sale dated 09.08.2006, without waiting for the determination of any other questions between the parties, the Court, may make such order or give such judgment as it may think fit, having regard to such admissions. The legal provision of Order XII, Rule 6 of the Code of Civil Procedure also says that where admissions of fact have been made either on the pleadings or otherwise, any party may, at any stage of the suit, apply to the Court for a judgment upon such admissions. Accordingly, the findings and conclusions reached by the Court below are unimpeachable.

11.At this stage, learned counsel appearing for the appellants, drawing our notice to Section 34 of the C.P.C., submitted that the appellants are entitled to pay the money at the rate of 9% per annum. Hence, it is relevant to extract Section 34 of the C.P.C. as under:

'34.Interest - (1)Where and in so far as a decree is



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for the payment of money, the Court, may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit'

12.However, Section 34, which has been inserted in C.P.C., also makes the issue much easier stating that the Court, may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree. When the appellants defendants have repeatedly admitted that they have received the aforesaid amount, we are of the view that the respondent plaintiff is entitled to get back the money with interest at the rate of 9% per annum.

13.Therefore, finding no error or infirmity in the findings and conclusion reached by the learned Single Judge, this Court is inclined to dismiss this appeal. Accordingly, this appeal stands dismissed and the appellants defendants are directed to re-fund the amount of Rs.35,00,000/- with interest at the rate of 9% per annum within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, C.M.P. No.19809 of 2021 stands closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vga

To:

The Sub Assistant Registrar,
Original Side Section,
High Court of Madras.

O.S.A.No.264 of 2018
and
C.M.P. No.19809 of 2021

SPD(CO)
RN(13/04/2022)