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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.958 of 2016

Kannan ... Appellant/Plaintiff

Vs.

1.Balakrishnan

2.Latha ... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree in A.S. No.13 of 2014 dated 19.01.2015 on the file of the Sub-Judge, Chidambaram, by confirming the Judgment and Decree in O.S.No.165 of 2006 dated 21.10.2013 on the file of the District Munsif & Judicial Magistrate, kattumannarkovil.

For Appellant : Mr.J.Ram

For Respondents : Mr.A.Muthu Kumar

JUDGMENT

The plaintiff is the appellant in the Second Appeal. The plaintiff filed suit for the relief of declaration to declare that the suit properties were purchased by the defendants through the funds provided by the plaintiff and the plaintiff had also sought for the relief of execution of deed of conveyance in his favour and for possession of the suit properties.

2.The case of the plaintiff is that he was employed abroad from the year 1992 and he was drawing sufficient salary. The first defendant is the brother of the plaintiff and the second defendant is the wife of the first defendant. According to the plaintiff, he used to regularly send money to the first defendant and had instructed the first defendant to purchase properties. It is the further case of the plaintiff that



between the period from 1992 till 2002, he had handed over a sum of Rs.1,50,000/- (One Lakh Fifty Thousand Rupees) to the first defendant to purchase lands and house sites in the name of the plaintiff.

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3.The grievance of the plaintiff is that the defendants had misused the confidence reposed on them and misappropriated the money and purchased the suit properties in the name of the first defendant and thereafter, the property was settled by the first defendant in favour of the second defendant. Aggrieved by the same, the present suit was filed seeking for various reliefs against the defendants.

4.The defendants filed a written statement and entirely denied the claim made by the plaintiff. According to the defendants, they had source of income and they had purchased the suit properties out of their own money and therefore according to the defendants, the claim made by the plaintiff is unsustainable.

5.Both the Courts below came to a categoric conclusion that the plaintiff has not proved the fact that the suit properties were purchased by the defendants only out of the money that was sent by the plaintiff. The Courts below held that the plaintiff failed to discharge the onus of proof and accordingly both the Courts rejected the claim made by the plaintiff. Aggrieved by the same, the present Second Appeal has been filed before this Court.

6.This Court heard the counsel appearing on either side and carefully perused the materials available on record.

7.A careful reading of the judgment passed by both the Courts below shows that the plaintiff has not established the fact that the suit properties were purchased only out of the sum of Rs.1,50,000/- (One Lakh Fifty Thousand Rupees) sent by the plaintiff to the first defendant. What the plaintiff had claimed is directly hit by the provisions of the Benami Transactions (Prohibition) Act. However, the plaintiff has attempted to bring this case within the exception under Section 4(3) (b) of the Act by stating that there is a fiduciary relationship between the parties. However the Courts below on appreciation of the oral and documentary evidence, have found that there is no material to substantiate that the first defendant had received a sum of Rs.1,50,000/- (One Lakh Fifty Thousand Rupees) between the period from 1992 to 2002. It seems that some settlement was attempted during the pendency of the



suit and the first defendant paid a sum of Rs.40,000 (Forty Thousand Rupees) to the plaintiff. This development does not in any way help the case of the plaintiff since it took place subsequent to the filing of the suit and such settlement of money can never have a bearing while deciding the case on merits.

8.In the considered view of this Court, there are no substantial questions of law involved in the present Second Appeal. In the absence of the same, this Court cannot reappraise the evidence and such exercise will go beyond the scope of Section 100 of the Code of Civil Procedure.

9.In the result, the Second Appeal stands dismissed. Considering the facts and circumstances of the case, there shall be no orders as to costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

Jeni/Nti
To

1. The Subordinate Judge,
Chidambaram.

2.The District Munsif & Judicial Magistrate,
Kattumannarkovil.

Copy To:-

The Section Officer,
VR Section, High Court Madras.

+lcc to Mr.J.Ram, Advocate Sr.8267
+lcc to Mr.A.Muthukumar, Advocate Sr.7857

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