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C.S.No.598 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2022

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

Civil Suit No.598 of 2019

1.Mr.P.Rajaram
S/o.Late Mr.Ponnusamy
NewNo.10, Old No.5
Saradambal Street
Gokulam Colony
T.Nagar, Chennai-17.

2.Mrs.Bhargavi Reddy
Wife of P.Rajaram
New No.10, Old No.5
Saradambal Street
Gokulam Colony
T.Nagar. Chennai-17.

..Plaintiffs

. Vs.

S.Ravindranathan
Son of Mr.N.Singaravelu
F1, Abdul Regency, 1st Floor No.6
South Mada Street
Srinagar Colony
Saidapet, Chennai 600 015.

... Defendant



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Prayer: Civil Suit filed under Order IV Rule 1 of the Original Side Rules r/w Order VII, Rule 1 of CPC., prays for a Judgment and Decree against the Defendant:

(a) directing the Defendant to pay the Plaintiffs a sum of Rs.10,00,00,000/- (Rupees Ten Crores Only) with interest at the rate of 14% p.a., from the date of filing of the plaint to till the date of realization. and ;

(b) to direct the defendant to pay the costs of the suit.

For Plaintiffs : Ms.E.Komal
for K.N.Shanthi

For Defendant : Ex-parte

JUDGMENT

Heard Ms.Komal, learned counsel for the plaintiffs.

2.The suit had been filed seeking a judgment and decree against the defendant to pay a sum of Rs.10,00,00,000/- (Rupees Ten Crores only) together with interest at 14% p.a., from the date of filing of the plaint to till the date of realisation and also for costs of the suit.



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3. Even before examining the averments made in the plaint and the arguments advanced, it must be stated that the defendant was served on 15.11.2019 and since the defendant had taken a conscious decision not to appear before the Court, and had also not filed a written statement, my learned predecessor, on 20.07.2021 had set the defendant ex-parte.

4. The plaintiffs were directed to tender ex-parte evidence.

5. Accordingly, the 1st plaintiff had filed his proof affidavit and had tendered evidence. It must be stated that the 2nd plaintiff was his own wife.

6. In the plaint, it had been stated that the plaintiffs were originally tenants under the defendant in the suit property at New No.10, Old No.5, Saradambal Street, Gokulam Colony, Chennai-600017. The agreement with respect to tenancy had been entered into by the 2nd plaintiff. The monthly rent was Rs.35,000/- (Rupees thirty five thousand only) initially and later increased to Rs.65,000/- (Rupees sixty five thousand only). The plaintiffs claimed that they had paid an advance amount



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of Rs.3,50,000/- (Rupees three lakhs fifty thousand only). The 2nd plaintiff was a chronically ill person due to kidney malfunction and needed constant medical care and attention. The defendant was carrying on business under the name and style of MPL Motors Private Limited and MPL Automobiles Private Limited. The defendant had mortgaged the property with ICICI Bank. The defendant has offered to sell the property to the 2nd plaintiff and he had informed that the property was the subject matter of mortgage with ICICI Bank. The defendant promised to release the property from mortgage. An agreement of sale was entered into between the 2nd plaintiff and the defendant on 13.04.2016, whereby, the defendant agreed to sell the property for a total sale consideration of Rs.9,00,00,000/- (Rupees nine Crores only).

7. Pending the agreement, the defendant also received various amounts towards discharge of mortgage and in this connection, a total sum of Rs.8,99,73,500/- (Rupees eight Crores ninety nine lakhs seventy three thousand five hundred only) had been paid by the plaintiffs towards



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discharge of the mortgage. However, the defendant did not show discharge the mortgage.

8. Thereafter, ICICI Bank proceeded to enforce the mortgage by filing an application before the Debt Recovery Tribunal. They also took possession of the property and the plaintiffs had to take alternate accommodation.

9. Thereafter, the defendant had entered into a Memorandum of Understanding accepting and admitting receipt of a sum of Rs.9,00,00,000/- (Rupees nine Crores only). and seeking time to execute the sale deed after discharge of the mortgage.

10. But, since the defendant had not taken any steps whatsoever seeking return of the amount of Rs.9,00,00,000/- (Rupees nine Crores only) paid to the defendant and a further sum of Rs.1,00,00,000/- (Rupees one Crores only) as compensation for mental agony owing to the



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dispossession of the property, the suit had been filed seeking Rs.10,00,00,000/- (Rupees ten Crores only) together with interest.

11.As stated, the defendant had remained ex-parte. The plaintiffs had filed the proof affidavit. PW-1 had marked Ex.P-1 the agreement of sale dated 13.04.2016. The copy was marked after verifying the original. The Memorandum of Understanding dated 20.04.2017 was marked as Ex.P-2 and again a copy was marked after verifying the original. Thereafter, the plaintiffs had applied for certified copies from the DRT and had marked the copies of the rental receipts for the period between 10.05.2014 and 16.01.2017 as Ex.P-3. The statement of accounts reflecting monies transferred to the account of the defendant between May 2016 and June 2016 was marked as Ex.P-4. The copies of treatment records of the 2nd plaintiff dated 02.04.2019 was marked as Ex.P-5.

12.The learned counsel for the plaintiffs stated that the plaintiffs had been misled by the defendant to retain possession of the property which was already the subject matter of mortgage and though the plaintiffs had



advanced monies as reflected under Ex.P-4, the defendant had not discharged the mortgage, but had rather retained the amounts so forwarded by the plaintiffs to himself. The plaintiffs also had to suffered the ignominy of being dispossessed by ICICI Bank and their personal belongings being removed from the said place. It is for that reason, that compensation is sought.

13.Insofar as the amount advanced, reliance is placed by the learned counsel on Ex.P.2, which is the Memorandum of Understanding wherein, the defendant had agreed and admitted to receiving the sum of Rs.9,00,00,000/- (Rupees nine Crores only). The fact that plaintiffs were tenants under the premises is established by Ex.P-3 which were monthly receipts and which were also filed before the DRT by the plaintiffs. The 2nd plaintiff being a chronically ill patient, had to suffer owing such dispossession and in that regard had filed Ex.P-5, the details of medical reports.



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14.In view of the evidence produced particularly also since the defendant had, though served, taken a decision, not to appear before Court, I hold that the plaintiffs that plaintiffs have made out a case for grant of the reliefs as prayed. However, interest can be granted at 12% p.a., on Rs.9,00,00,000/-(Rupees nine Crores only) which would be the amount actually advanced. On the compensation amount of Rs.1,00,00,000/- (Rupees one Crore only), there cannot be any interest stated .

15.The suit is partly decreed for a sum of Rs.9,00,00,000/- (Rupees nine Crores only) together interest at 12% p.a., from the date of presentation of the plaint till the date of realization and for a further consolidated sum of Rs.1,00,00,000/- (Rupees one Crore only) which will not carrying any interest and also costs for the suit.

07.11.2022

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List of Witness examined on the side of the Plaintiffs:-

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PW.1 - Mr.P.Rajaram Reddy

List of the Exhibits marked on the side of the Plaintiffs:-

Sl. Nos.	Exhibits	Description of documents
1.	Ex.P.1	Is the photocopy of agreement for sale dated 13.04.2016 (verified with original and returned)
2.	Ex.P.2	Is the photocopy of Memorandum of Understanding dated 20.04.2017 (verified with original and returned)
3.	Ex.P.3	Is the certified copy of the rental receipts dated 10.05.2014 to 16.01.2017.
4.	Ex.P-4	Is the certified copy of the statement of accounts from May 2016 to June 2016.
5.	Ex.P.5	Is the certified copy of the treatment records of the 2 nd plaintiff dated 02.04.2019.

List of the Exhibits marked on the side of the Defendant:-

Nil

07.11.2022

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Internet: Yes

Index:Yes/No

Speaking Order : Yes/No

To

The Sub-Assistant Registrar,
Original Side,
High Court, Madras.



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C.V.KARTHIKEYAN,J.,
KP

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