



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2022

CORAM

WEB COPY

THE HONOURABLE MS.JUSTICE R.N.MANJULA

A.S. (MD)No.147 of 2018

S.Shenbagaraj

... Appellant/Defendant

Vs.

M.Dhanabal

... Respondent/Plaintiff

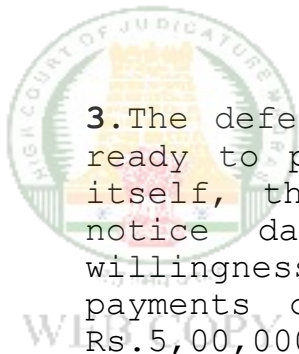
Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, against the judgment and decree passed in O.S.No.130 of 2014 on the file of the learned Principal District Judge, Tiruchirappalli District, dated 21.11.2017.

For Appellant : Mr.D.Srinivasa Ragavan
For Respondent : Mr.P.Arun Jayatram

JUDGMENT

This Appeal Suit has been preferred challenging the judgment and decree of the learned Principal District Judge, Tiruchirappalli, dated 21.11.2017 made in O.S.No.130 of 2014.

2.The appellant was the defendant in the suit; the respondent/plaintiff filed the suit for recovery of money based upon an agreement for sale; as per the averments of the plaint, on 08.02.2014, a sale agreement was entered into between the plaintiff and the defendant to sell the suit property for value of Rs.60,00,000/-; on the date of sale agreement itself, the plaintiff had given the advance amount of Rs.20,00,000/- to the defendant; for the payment of balance sale consideration and get the sale deed executed, time was agreed till 31.08.2014; the defendant had assured to produce the original document of the suit property after his wife returned from abroad; but the defendant was evading to show the original title deed and hence, it was not possible to proceed further; however, at the instance of the defendant, the plaintiff paid further part sale consideration of Rs.15,00,000/- on 20.02.2014 and another Rs.5,00,000/- on 03.05.2014; when the endorsement was made to that effect in the sale agreement, the defendant refused to make his signature in acknowledgement thereof; since the defendant did not take any step to get the sale completed as per the terms of the sale agreement, the plaintiff filed the suit for recovery of the advance amount of Rs.20,00,000/- along with interest.



3.The defendant resisted the suit by stating that he was all along ready to perform his part of the contract and even on 12.08.2014 itself, the plaintiff issued a legal notice and he issued reply notice dated 15.08.2014; that would show his readiness and willingness to perform his part of contract; the alleged further payments of Rs.15,00,000/- on 20.02.2014 and a further sum of Rs.5,00,000/- on 03.05.2014 are false; except Rs.20,00,000/-, which was received on the date of sale agreement, no further sale consideration was received by the defendant; the sale could not be completed only due to the default of the plaintiff and hence, the suit should be dismissed.

4.Basing upon the above pleading, the learned trial Judge framed the following issues:-

- 1.Whether this Court has no jurisdiction to try the case?
- 2.Whether the plaintiff is not entitled to claim recovery of advance amount, since the plaintiff filed suit before even completed time for agreement?
- 3.Whether the defendant case is acceptable one without cancel the sale agreement the plaintiff is not entitled to get the recovery of advance amount?
- 4.Whether the plaintiff is entitled to get the relief of refund of advance amount with rate of interest as prayed for?
- 5.To what any other relief the plaintiff is entitled for?

5.During the course of the trial, on the side of the plaintiff, one witness was examined as P.W.1 and Exs.A1 to A8 were marked; on the side of the defendant, one witness was examined as D.W.1 and no document was marked.

6.At the conclusion of the trial and on considering the evidence on record, the learned trial Judge decreed the suit for payment of a sum of Rs.21,26,666/- to the plaintiff with interest for the principal sum of Rs.20,00,000/- at the rate of 9% per annum from the date of plaint till the date of decree and at 6% per annum from the date of decree till realization.

7.Heard the learned counsel for the appellants and the learned counsel for the first respondent and went through the evidence on record.

8.The learned counsel for the appellant submitted that sale agreement is true but the sale could not be completed only due to the default of the respondent; the legal notice sent by the appellant vide Ex.A5 would show that the appellant was willing to perform his part of contract; in fact, the respondent did not have



sufficient money to meet out the sale price and get the sale deed executed; for the lack of readiness and willingness on the part of the respondent, the appellant cannot be penalized; hence, the appeal should be allowed.

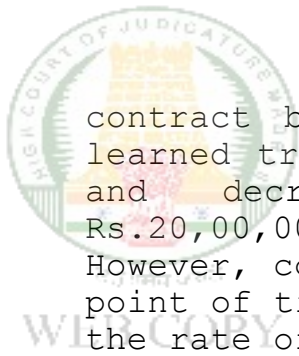
9.The learned counsel for the respondent submitted that as agreed, the appellant did not produce the original document of the suit property and he also refused to make endorsement for the further sale consideration; only because of the inaction on the part of the appellant, the sale could not be completed and that is the reason why, he filed the suit for recovery of the advance amount; the learned trial Judge has rightly appreciated the evidence on record and decreed the suit and it does not require any interference.

10.Basing on the rival submission, the point for considering arising in this Appeal Suit is as follows:

"Whether the judgment and decree of the learned trial Judge is fair and proper?"

11.The fact that Ex.A1/sale agreement dated 08.02.2014 was entered into between the appellant and the respondent was not disputed. The sale agreement was entered to sell the property belonging to the defendant for a sum of Rs.60,00,000/-. On the date of sale agreement itself, a sum of Rs.20,00,000/- was paid as advance and that is also not denied by the appellant. The respondent made claims for further payments of Rs.15,00,000/- on 20.02.2014 and Rs.5,00,000/- on 30.05.2014. But the same was not proved before the Court. Even the suit was filed for recovery of Rs.21,26,666/-. This appears to be inclusive of interest on Rs.20,00,000/- only. So this fact would show that the respondent could have paid only Rs.20,00,000/- as advance or part sale consideration and he had not paid anything more. The learned trial Judge had also rightly appreciated the evidence on this aspect and held that an advance amount of Rs.20,00,000/- was paid by the respondent to the appellant.

12.It was claimed by the appellant that he was all along ready to perform his part of contract. However, the respondent contended that the original title deed of the suit property was not shown to him. Unless the original title deed of the suit property is shown to be available with the vendor, it is not possible for the purchaser to move forward and complete the sale transaction. But the fact remains that the suit was not filed for seeking the relief of specific performance and the plaintiff restricted his prayer to recover the advance amount alone. Excepting Ex.A6, the appellant has not produced any other document to show that he had acted in terms of the agreement and cooperated with the respondent by furnishing the original title deeds for his perusal. Under such circumstances, the respondent is at liberty to repudiate the



contract by claiming back the advance amount paid by him. The learned trial Judge has rightly appreciated the evidence on record and decreed the suit for recovery of a sum of Rs.20,00,000/- along with interest to a tune of Rs.21,26,666/-. However, considering the rates of interest prevailed at the relevant point of time, I feel that some indulgence should be shown in fixing the rate of interest from the date of the date of plaint to till the date of decree. Thus, decree of the trial Court requires modification to that extent alone. The point is answered accordingly.

13.In the result, this Appeal Suit is disposed of and judgment and decree of the learned Principal District Judge, Tiruchirappalli, dated 21.11.2017 made in O.S.No.130 of 2014, is modified to the effect that the appellant is directed to pay Rs.21,26,666/- to the respondent with interest on the principal sum of Rs.20,00,000/- at the rate of 7.5% per annum from the date of plaint till the date of decree and thereafter at the rate of 6% per annum from the date of decree till the date of realization. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To:

The Principal District Court,
Tiruchirappalli.

Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D. SRINIVASARAGAVAN, Advocate (SR-18249[F] dated
12/04/2022)

A.S. (MD) No.147 of 2018
11.04.2022

SS (CO)
KB(12.05.2022) 4P 5C