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A.S.No.383 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

A.S.No.383 of 2016

and

C.M.P.No.11886 of 2023

1. S.Ravindran (alias) S.Ravindranath
2. Dr.S.Suseela
3. Surendranath Appellants/Defendants

Vs

John Kennedy Respondent/Plaintiff

PRAYER: Appeal Suit filed under Section 96 of CPC to set aside the Judgment and Decree dated 21.07.2015 made in O.S.No.530 of 2010 on the file of the I Additional District Judge, Coimbatore.

For Appellants : Mr.M.S.Subramanian
For Respondent : No appearance

JUDGMENT

This Appeal Suit has been filed against the Judgment and Decree dated 21.07.2015 made in O.S.No.530 of 2010 on the file of the I Additional District Judge, Coimbatore, thereby decreed the suit.



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2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The defendants are the appellants and the plaintiff is the respondent. The respondent filed a suit for recovery of money. The case of the plaintiff is that the suit properties belonged to one Lakshmi Somanathan, who derived title as per the partition deed dated 05.06.1982 registered vide Document No.2435/1982. She died intestate on 03.01.1999 leaving behind the defendants and one Shoba as her legal heirs. The legal heirs succeeded to the estate of the deceased Lakshmi Somanathan. The said Shoba died on 22.07.2006 and her share was also derived by the defendants. The defendants offered to sell the properties at Rs.60,000/- per cent for a total extent of 133 cents and 212 sq.ft and the plaintiff agreed to purchase the same and entered into an agreement for sale on 11.06.2007. On the date of agreement, a sum of Rs.12,00,000/- was paid as advance and part of the sale consideration. Apart from the agreement for sale, they also executed a power of attorney in favour of the plaintiff to sell and negotiate and encumber the suit property to the third



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parties. On the strength of the power of attorney, the plaintiff also filed a suit in O.S.No.865 of 2008 on the file of the Fast Track Court No.III, Coimbatore, against one A.Rema, for partition.

4. Pending suit, without informing anything to the plaintiff, the defendants cancelled the power of attorney unilaterally by a cancellation deed dated 30.07.2009. They also filed Interlocutory Application in I.A.No.34 of 2009 in O.S.No.865 of 2008. Therefore, the defendants, deliberately with an intention to defraud and deceit the plaintiff, cancelled the power of attorney unilaterally. Though the plaintiff is always ready and willing to perform his part of the contract, the defendants failed to execute the sale deed as per agreement for sale dated 11.06.2007. Therefore, the plaintiff caused legal notice dated 06.06.2010, thereby called upon the defendants to return the advance amount with interest at the rate of 24% per annum. After the notice, the plaintiff also had sent a telegram on 07.06.2010 to the defendants with regard to return the advance amount. Hence, the suit for recovery of money.



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5. Resisting the same, the defendants filed written statement stating that after filing the suit for partition by the plaintiff, the defendants tried to contact the plaintiff, but in vain. Therefore, they were not having any other option except to cancel the power of attorney. That apart, the plaintiff did not agree for the advocate, who was suggested by the defendants, to appear on behalf of the plaintiff. Therefore, the plaintiff only defrauded the defendants. The defendants are always ready and willing to perform their part of the contract. After receipt of notice, the defendants duly replied by their legal notice dated 22.06.2010.

6. On hearing the rival pleadings, the learned Trial Judge framed the following issues for determination in the suit :-

- "1. Whether the suit agreement is genuine ?*
- 2. Whether the defendants are only borrowers of plaintiff?*
- 3. Whether the plaintiff is entitled to suit claim?*
- 4. To what relief is the plaintiff entitled ? "*

7. On the side of the plaintiff, he had examined P.Ws.1 to



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3 and marked Exs.A1 to A17. On the side of the defendants, they had examined D.W.1 and D.W.2 and marked Exs.B1 to Ex.B19. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the Trial Court decreed the suit. Aggrieved by the same, the present Appeal Suit has been preferred by the defendants.

8. The learned counsel for the appellant/defendants would submit that already the plaintiff had filed four suits as against the defendants and even then, the Trial Court failed to conduct a common trial and passed Judgment and Decree in the present suit, that too, for recovery of money. The defendants never executed any agreement for sale as alleged by the plaintiff and they had signed in the blank papers for the loan availed by them. In fact, the power agent never whispered about the agreement for sale entered between the plaintiff and the defendants. There was absolutely no necessity for the plaintiff to file a suit for partition against Rema, who is the daughter of the defendants' sister Shoba. The power of attorney has nothing to do with the agreement for



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sale. When the defendants were always ready and willing to perform their part of the contract, the plaintiff did not come forward to pay the balance sale consideration.

9. He further submitted that as per the terms of agreement for sale, in the event the title is not made out, the vendors shall return the advance amount of Rs.12,00,000/- to the purchaser and till date the same shall be a charge on the property hereby sold. Therefore, a sum of Rs. 12,00,000/- becomes payable only in the event of title being not made out. Further, the interest awarded by the Trial Court is higher than the normal interest at the rate of 6%. He also submitted that during the year 2000, the market value of the property is more than 3.5 lakhs per cent. Once if the market value of the property was sold by the plaintiff, without the defendants' consent, it is adjusted towards the amount paid by the plaintiff to the defendants. Therefore, the plaintiff will be liable to pay further amount to the defendants rather than the defendants paying to the plaintiff. However, the Trial Court failed to set off the amount, which was liable to be paid by the plaintiff.

10. Heard the learned counsel appearing for the appellants



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and perused the materials available on record. Though notice was served on the respondent and his name has been printed in the cause list, today, no one appeared before this Court in person or through pleader.

11. On the submissions made by the learned counsel for the appellants/defendants, the following points arise for consideration in this appeal suit :

- (i) Whether the plaintiff is entitled to refund of advance amount which was paid at the time of entering into an agreement for sale dated 11.06.2007 ?
- (ii) Whether the plaintiff is entitled for interest at the rate of 24% ?

12. Admittedly, the suit properties are owned by the defendants. They derived title, after demise of their mother. Their mother derived title over the property as per the partition deed dated 05.06.1982 registered vide Document No.2485 of 1982. The defendants offered to sell the properties for sale consideration of Rs.60,000/- per cent



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for a total extent of 133 cents and 212 Sq.ft of suit properties. The plaintiff agreed to purchase the property and entered into an agreement for sale dated 11.06.2007 and paid a sum of Rs.12,00,000/- in the following manner :-

(a) Rs.2,00,000/- (Rupees Two Lakhs only) by means of pay order drawn on Union Bank of India, Mathavaram Branch dated 06.06.2007 bearing No.060134 in favour of S.Raveendran @ S.Raveendranath.

(b) Rs.2,00,000/- (Rupees Two Lakhs only) by means of pay order drawn on Union Bank of India, Mathavaram Branch dated 06.06.2007 bearing No.060135 in favour of S.Raveendran @ S.Raveendranath (1st defendant)

(c) Rs.4,00,000/- (Rupees Four Lakhs only) by means of pay order drawn on Union Bank of India, Mathavaram Branch dated 06.06.2007 bearing No.060139 in favour of Dr.Suseela (2nd defendant)

(d) Rs.4,00,000/- (Rupees Four Lakhs only) by means of pay order drawn on Union Bank of India, Mathavaram Branch dated 06.06.2007 bearing No.060132 in favour of S.Surendranath (3rd



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defendant)

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13. It is categorically admitted by the defendants who acknowledged the receipt of advance amount. On the same day, i.e., on 11.06.2007, the defendants also had executed power of attorney in favour of the plaintiff. In fact, on the strength of the power of attorney on behalf of defendants, the plaintiff, being the power holder, has filed the suit in O.S.No.865 of 2008 as against one Rema, who is none other than the defendants' sister's daughter, on the file of the Fast Track Court No.III, Coimbatore. Pending suit, the defendants cancelled the power of attorney by a cancellation deed dated 30.07.2009. In fact the defendants also filed an Interlocutory Application in I.A.No.34 of 2009 to appoint their advocates for the plaintiff. The reasons stated for cancellation of power of attorney cannot be accepted, since the plaintiff failed to agree with the counsel, who was recommended by the plaintiff, to file a suit. The power of attorney was cancelled unilaterally without even an intimation to the plaintiff. Therefore, it cannot be said that the power of attorney has nothing to do with the agreement for sale.

14. Pursuant to the agreement, immediately, the defendants



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had executed power of attorney to deal with the suit properties. In fact, both were registered on the same day. The defendants categorically admitted the receipt of advance amount to the tune of Rs.12,00,000/- and also as part of sale consideration. However, the defendants, by cancellation of power of attorney, had shown their interest not to sell the property in favour of the plaintiff. Therefore, they dragged the plaintiff in respect of registration of sale deed. Hence, the plaintiff caused notice on 06.06.2010 to the defendants, thereby called upon them to refund the advance amount, which was paid as advance and part of sale consideration. Pursuant to the agreement for sale dated 11.06.2007 with interest at the rate of 24% , the very next day, the plaintiff has sent a telegram to the defendants for the very same demand. Both were duly received by the defendants. Though the defendants replied by way of reply notice dated 22.06.2010, the defendants failed to refund the advance amount. Therefore, the defendants are liable to refund the advance amount with interest.

15. Insofar as the set off the amount allegedly payable by



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the plaintiff to the defendants is concerned, the claim of the defendants made in the written statement is not in nature of set off. In the nature of a counter claim, on any right or claim in respect of a cause of action accruing to the defendants against the plaintiff either before or after the filing of the suit but before the defendants has delivered his defence or before the time limited for delivering his defence has expired, is a counter claim whether such counter claim is in the nature of a claim for damages or not.

16. It is relevant to extract the provision under Order 8 Rule 6A of the Code of Civil Procedure, which reads as follows :-

“6 (a) A bequeaths Rs.2,000 to B and appoints C in his executor and residuary legatee. B dies and D takes out administration to B's effects. C pays Rs.1000 as surety for D ; then D sues C for the legacy, C cannot set off the debt of Rs.1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of Rs.1000.”



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17. Therefore, the defendants cannot claim adjustment unless it pays Court fee as all the Rules that apply to a plaint have to apply to a counter claim. Admittedly, the defendants did not make any counter claim and failed to pay any Court fees. Therefore, the claim of set off cannot be accepted and the Trial Court rightly rejected the claim of set off.

18. Insofar as the interest is concerned, the Trial Court awarded 12% interest per annum from the date of suit till the payment. This Court feels that it is on the higher side and is liable to be reduced.

19. In view of the above, this Court modifies the Judgment and Decree insofar as the interest alone. Accordingly, the interest alone is reduced from 12% per annum to 6% per annum. Hence, the Judgment and Decree is modified to the effect that the defendants are liable to refund a sum of Rs.12,00,000/- with interest at the rate of 6% per annum.

20. In the result, this Appeal Suit is partly allowed.



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Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes / No
Internet : Yes / No
Speaking order /Non-speaking order
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To

1. The I Additional District Judge,
Coimbatore.

2. The Section Officer,
V.R.Section,
High Court, Madras.

G.K.ILANTHIRAIYAN, J.



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