



AS.No.599 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **27.11.2023**

CORAM

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**
and
THE HONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

A.S.No.599 of 2016
and CMP Nos.15950 & 18409 of 2016

1. S.Mohammed Yusuf

2. H.Zeenathunnisa

... Appellants

vs.

1. P.M.Mohan Kumar

2. N.Mohan

3. K.A.Akbar Baasha

... Respondents

Appeal suit has been filed under Section 96 read with Order XLI Rule 1 of the Civil Procedure Code, against the judgment and decree dated 15.09.2015 made in OS No.100 of 2014, on the file of the Principal District Judge, Krishnagiri.



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For Appellants : Mr.E.Om Prakash, Senior Counsel
for Mr.R.Ezhilarasan

For Respondents : Mr.C.Jagadish

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The defendants in OS No.100 of 2014 on the file of the Principal District Court, Krishnagiri, are on Appeal, challenging the judgment and decree in the said suit directing them to pay a sum of Rs.2,34,29,333/- with interest at 12% per annum on Rs.2,30,00,000/- from the date of decree till date of payment.

2. The suit was launched by the respondents herein claiming that they had entered into two sale agreements with the appellants, in and by which, the appellants had agreed to sell certain properties belonging to them and had received an advance of Rs.2,10,00,000/- in all. According to the plaintiffs, the defendants entered into an agreement of sale on



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05.08.2012 agreeing to convey various properties shown in Schedule 'A' and 'B' to the said agreement for a total consideration of Rs.3,52,49,500/- and had received an advance of Rs.50,00,000/- on the date of the agreement.

3. While the Schedule 'A' properties belonged to the first defendant by virtue of two agreements dated 28.04.2009 and 15.04.2012 entered into by him with the owners of the property and the suit 'B' Schedule properties belonged to the second defendant, the wife of the first defendant, under two sale deeds bearing document Nos.985 of 2008 and 312 of 2011. It was also claimed that subsequently on 09.04.2013, the plaintiffs paid a further sum of Rs.1,50,00,000/- which was evidenced by an endorsement made on the reverse of the first page of the Agreement dated 05.08.2012. The plaintiffs would further plead that the defendants agreed to sell, the suit 'C' Schedule properties in respect of which the first defendant had entered into two agreements dated 28.01.2013 and 31.01.2013.

4. As per the terms of the contract entered into between the



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plaintiffs and the defendants on 02.02.2013, the plaintiffs had agreed to purchase an extent of 17 acres and 28 cents at Rs.43,750/- per cent and had paid an advance of Rs.10,00,000/-. The total consideration fixed under the said contract dated 02.02.2013 was Rs.7,56,00,000/- .

5. Claiming that the defendants have been evading performance of the contract and also alleging that they had sold some of the properties subject matter of the agreement to third parties, the plaintiffs convened a Panchayat on 10.04.2014. According to the plaintiffs on 10.04.2014, at the instance of the Panchayatdars, the defendants agreed to pay a sum of Rs.1,80,00,000/- within a period of four weeks from that day and they had further agreed that in the event of their failiure to pay Rs.1,80,00,000/-, as promised, within four weeks, the plaintiffs would be entitled to recover a further sum of Rs.50,00,000/- over and above the sum of Rs.1,80,00,000/- i.e.,Rs.2,30,00,000/-.

6. Claiming that the defendants have not kept their word as per the Panchayat Muchalika dated 10.04.2014, the plaintiffs had issued a legal notice on 29.09.2014, which was returned as unclaimed. Contending



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that the defendants have failed to comply with the terms of the Panchayat Muchalika dated 10.04.2014, the plaintiffs had launched the above suit for recovery.

7. The suit was resisted by the defendants contending that though the agreements viz. Exs.A1 and A2 are true, the Panchayat Muchalika Ex.A3 was brought about by coercion and undue influence. It was the further contention of the defendants that though there is an endorsement for payment of Rs.1,50,00,000/- on 09.04.2013, actually it was only Rs.80,00,000/- that was paid. It was also contended that even on 05.08.2012 only Rs.45,00,000/- was paid as advance while the agreement stated that Rs.50,00,000/- was paid as advance.

8. As far as the second agreement dated 02.02.2013, the defendants would admit execution and receipt of the advance of Rs.10,00,000/-. Thus, the defendants would admit receipt of Rs.1,25,00,000/-, they would also claim that since the plaintiffs were not ready and willing to perform their part of the contract, they are not entitled to sue for refund of advance.



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9. On the above pleadings, the learned Trial Judge framed the following issues:

1. Whether the Plaintiffs are entitled to recover a sum of Rs.2,34,29,333/- with interest at 12% per annum from the defendants;

2. Whether the plaintiffs had paid only Rs.70,00,000/- and had obtained an endorsement for Rs.1,50,00,000/- on 10.04.2013.

3. Whether the plaintiffs had obtained the second agreement dated 02.02.2013 by coercion and undue influence;

4. Whether the Panchayat Muchalika dated 10.04.2014 was brought out by coercion and undue influence;

5. Whether the defendants are liable to pay only a sum of Rs.1,25,00,000/-;

6. Whether the plaintiffs were not ready and willing



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to perform their part of the contract;

*7. Whether the defendants were ready and willing
to perform their part of the contract;*

*8. Whether the defendants were entitled to
compensatory costs; and*

*9. To what other reliefs, the plaintiffs are entitled
to?*

10. At trial, the first plaintiff was examined as P.W.1 and three other witnesses were examined on the side of the plaintiffs as P.Ws.2 to 4. P.Ws. 2 and 3 are the attesting witnesses to the Panchayat Muchalika dated 10.04.2014 and P.W.4 is the clerk in the office of the Chartered Accountant of the plaintiffs, who had produced the Income Tax Returns along with the ITR Forms. Exhibits A1 to A12 were marked. The first defendant was examined as D.W.1 and Exhibits B1 to B6 were marked.

11. The learned Trial Judge upon consideration of the evidence on



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record concluded that the agreements are true and valid. The Trial Court also reached the conclusion that Ex.A3 Panchayat Muchalika was a voluntary act by the defendants and therefore, the same would be enforceable since the defendants had not complied with the terms of the said Panchayat Muchalika. The learned Trial Judge also went into the question of readiness and willingness and concluded that the plaintiffs were ready and willing and it was the defendants, who had sold portions of the property to third parties and frustrated the agreements.

12. On the said findings, the learned Trial Judge granted a decree as prayed for, for repayment of a sum of Rs.2,34,29,333/- with interest at 12% per annum from the date of decree till date of payment. Hence this Appeal by the defendants.

13. We have heard Mr.E.Om Prakash, the learned Senior Counsel appearing for Mr.Ezhilarasan, for the appellants and Mr.C.Jagadish, learned counsel appearing for the respondents.

14. Mr.E.Om Prakash, the learned Senior Counsel appearing for



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the appellants would vehemently contend that the Trial Court was not right in accepting the Panchayat Muchalika. Taking us through the evidence on record, the learned Senior Counsel would submit that the Trial Court ought not to have believed the evidence of P.Ws.1 to 3 which is conflicting. The learned Senior Counsel would also point out that P.W.1 in his cross-examination has admitted that there were 25 to 30 persons in the Panchayat that was convened on 10.04.2014 including a few lawyers, the presence of such large group of persons, according to the learned Senior Counsel, would lead to the presumption that the defendants were coerced and coaxed into signing the Panchayat Muchalika dated 10.04.2014. He would also point out that the evidence of P.Ws.2 and 3, wherein there are certain admissions which would go to show that the Panchayat was held in the evening between 4.00 p.m. and 10.00 p.m. and signatures were obtained.

15. The learned Senior Counsel would require us to draw an adverse inference against the plaintiffs, from the very fact that a large group of 25 to 30 people were present in the house of the defendants for



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more than 6 hours, which would by itself be evidence of exercise of undue influence and coercion. The learned Senior Counsel would also take exception to the presence of lawyers in that group. It is common knowledge that lawyers often indulge in these kinds of Panchayats today, though it is unwelcome. We must acknowledge the fact that this has become a perennial source of income for lawyers of the day. We are only remind of the saying that:

“திருடராய் பார்த்து திருந்தா
விட்டால் திருட்டை ஒழிக்க முடியாது”

It is for the lawyers to reform themselves and not indulge in such kind of Panchayats, so that the dignity of this noble profession is maintained. Therefore, according to the learned Senior Counsel, the presence of the lawyers had a delirious effect on the appellants which led them to sign the Panchayat Muchalika.

16. The learned Senior Counsel would also point out that even assuming Ex.A3 to be true. It cannot be enforced as its contents are wholly



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penal in nature. Taking us through the contents of Ex.A3, the learned Senior Counsel would submit that it is a document in terrorem. It imposes a huge penalty of Rs.50,00,000/- for non-payment of a sum of Rs.1,80,00,000/- by a certain date. The entirety of the document is penal in nature and therefore, it is unenforceable.

17. Contending contra, Mr. C.Jagadeesh, learned counsel appearing for the respondents would submit that P.W.1 has categorically stated that two of the four lawyers present were lawyers of the defendants and therefore, the theory that the presence of the lawyers had a delirious effect on the defendants ought not to be accepted by us. He would also point out that the Panchayat Muchalika was entered on 10.04.2014 and till 25.09.2014 viz. the date on which a Police Complaint was lodged and a community service register was obtained by the defendants, there was not even a whisper by them regarding the undue influence and coercion that was exercised on them by the group of persons containing four lawyers.

18. The learned counsel would submit that both the complaints



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dated 25.09.2014 and 21.10.2014, as evidenced by Exs.B5 and B6 are clear after thought and they have been made only with a view to create evidence for the plea of coercion and undue influence. The learned counsel would also contend that once the execution of Exs.A1 and A2 is admitted, the defendants cannot be permitted to raise a plea that the advance amount recited therein was not paid. Such a plea, according to the learned counsel is barred by Section 92 of the Evidence Act.

19. According to the learned Counsel, if the plaintiffs were not paid a sum of Rs.50,00,000/- on 05.08.2012 the date of the first agreement as advance, the defendants would not have signed the endorsement on 09.04.2013, for receipt of sum of Rs.1,50,00,000/-. They would not have entered into a second Agreement for the 'C' Schedule property on 02.02.2013. This conduct and the total absence of any complaint by the defendants between 09.04.2013 and 25.09.2014 would show that the claim that only part of the amount was paid is completely false and has been created only to build a defence to the expected suit. The learned counsel would also point out that the plaintiffs have produced their Income Tax returns which would go a long way to show that they are



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men of means, and they were capable of making such huge advance.

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20. From the contentions of the counsel for the parties, the following points emerge for consideration:

1. Whether the Panchayat Muchalika dated 10.04.2014 is valid and enforceable;

2. Whether the plaintiffs are entitled to a decree for refund of advance;

3. Whether the claim of the defendants that they received only Rs.1,25,00,000/- is acceptable.

Point No.1:

21. No doubt, the defendants can be very easily non-suited on the ground that they have not raised a whisper between 10.04.2014 and 25.09.2014 for nearly five months. While the defendants admit their signatures in Ex.A3, they would claim that it was obtained by coercion and undue influence. The fact that lawyers were present and there were



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about 25 to 30 men, who had assembled in the house of the defendants on 10.04.2014, even assuming that this fact by itself is not sufficient to establish coercion or undue influence, while considering the fact that the defendants had not chosen to lodge a complaint regarding such coercion or undue influence for over five months, we do not think that Ex.A3 as it stands could be enforced.

22. As rightly contended Mr.E.Om Prakash, learned Senior Counsel appearing for the appellants, the document itself is completely penal in nature. Such an agreement to pay Rs.50,00,000/- over and above the amount agreed upon in the event of failure to pay by a particular date, in our considered opinion, cannot at all be enforced. The contents of Ex.A3 are wholly unjust and apart from being penal in nature. We therefore, do not think that Ex.A3 as its stand could be enforced in a Court of law. We therefore, conclude that even assuming that Ex.A3 is true, it cannot be enforced.

Point Nos.2 & 3:

23. The execution of the agreements Exs.A1 and A2 is not denied.



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The receipt of advance under Exs.A1 and A2 as well as the additional amount on 09.04.2013 is also not denied. The defendants would however plead that they did not receive the amount as stated in the agreement. While it is their case that they received only Rs.45,00,000/- instead of Rs.50,00,000/- on 05.08.2012 and Rs.70,00,000/- instead of Rs.1,50,00,000/- on 09.04.2013. Therefore, the defendants admit receipt of Rs.1,25,00,000/- under the agreements. The agreements are written instruments and the execution of the agreements are admitted. The signatures in the endorsement dated 09.04.2013 are also admitted. Therefore, it is not be open to the defendants to contend that they have not received those amounts, particularly when they have not raised their little finger regarding payment of a lesser amount than what is recited in the document soon after the execution of the document.

24. Curiously the first agreement has been entered into on 05.08.2012, the second agreement has been entered into on 02.02.2013 and the endorsement for receipt of Rs.1,50,00,000/- made in the first agreement on 09.04.2013. These transactions themselves was spread over for a period of eight months. The conduct of the defendants in



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signing these documents would by itself establish that their stand that they were paid a lesser amount is wholly unsustainable. If only the plaintiffs had paid only Rs.45,00,000/- and made a recital in Ex.A1 agreement that Rs.50,00,000/- was paid, the defendant would not have entered into the second agreement on 02.02.2013 and they would not have made an endorsement on 09.04.2013. This conduct of the defendants by itself demolishes their defence regarding non-payment of a sum of Rs.2,10,00,000/-, as claimed by the plaintiffs. We are therefore, unable to accept the defence for the reasons stated above and we conclude that the plaintiffs are entitled to recover a sum of Rs.2,10,00,000/- which has been paid as advance.

25. Though an attempt is made by Mr.E.Om Prakash, learned Senior Counsel to project that there is no evidence available for payment of such large sums as advance, we find from the Income-Tax returns that have been filed by the plaintiffs that they are men of means and the payments made by them have been reflected in their Income-Tax returns for the relevant years. We are therefore, unable to accept the contention of the learned Senior Counsel regarding the means of the plaintiffs to



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advance such huge sums.

26. Hence Point Nos.2 and 3 are answered against the appellants and we conclude that the plaintiffs are entitled to a decree for a sum of Rs.2,10,00,000/- with interest at 9% per annum from 10.08.2014 till date of payment.

27. In fine the Appeal is partly allowed, the judgment and decree of the Trial Court are set aside, there will be a decree for a sum of Rs.2,10,00,000/- with interest at 9% from 10.08.2014 till date of payment. The suit cost granted by the Trial Court will stand confirmed and there will be no cost in the Appeal. Consequently, the connected miscellaneous petitions are closed.

(R.SUBRAMANIAN, J.) (N.SENTHILKUMAR, J.)
27.11.2023

Index : Yes
Internet : Yes



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Neutral Citation : Yes
Speaking order
jv

To

1. The Principal District Judge,
Krishnagiri.
2. The Section Officer,
V.R.Section,
Madras High Court.



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R.SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.

jv

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