



AS No.239 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-02-2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AS No.239 of 2017

And

CMP No.9526 of 2017

1.Iliyash (Died)

2.Noorunnisa,
W/o.Late Iliyash

3.Asker Ahamed,
S/o.Late Iliyash

4.Emthiyas Ahamed,
S/o.Late Iliyash

5.Shabrin Banu,
D/o.Late Iliyash

(Appellants 2 to 5 brought on record
as LR's of the deceased first appellant
viz., Iliyash vide order of Court dated
05.09.2022 made in CMP Nos.6586,
6596 and 6599 of 2020 in AS No.239
of 2017)

.. Appellants



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VS.

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1. Deepan Chakravarthi

2. Mithoon Chakravarthi

3. Priyanka

.. Respondents

PRAYER : This Appeal Suit is filed under Section 96 of the Code of Civil Procedure against the decree and judgment dated 15.03.2017 made in OS No.72 of 2015 on the file of the learned Additional District Judge, Dharmapuri.

For Appellants : Mr.T.M.Vijay for
Mr.S.Doraisamy

For Respondents : Mr.P.Muthusamy

J U D G M E N T

The present Appeal Suit has been instituted against the judgment and decree dated 15.03.2017 passed in OS No.72 of 2015 on the file of the learned Additional District Judge, Dharmapuri.



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2. The first appellant is the defendant and the respondents are the plaintiffs in the suit. The respondents-plaintiffs instituted the suit for recovery of money of Rs.22 lakhs with interest and for permanent injunction.

3. The plaint averments reveal that the suit properties belonged to the first appellant-defendant and the first appellant-defendant had agreed to sell the suit property to the plaintiffs' father Mr.A.T.Velayudham at the rate of Rs.51 lakhs and the Sale Agreement was entered into between the plaintiffs' father Mr.A.T.Velayudham and the first appellant-defendant on 26.11.2012.

4. The first appellant-defendant had received Rs.20 lakhs towards advance. The time for Sale Deed was fixed as five months. As per the terms and conditions of the Sale Agreement, Mr.A.T.Velayudham took possession of the suit property and spent Rs.3 lakhs to promote the land for the purpose of converting the same into Housing Plots with the concurrence



of the first appellant-defendant. Meanwhile, Mr.A.T.Velayudham died on 13.02.2014 in the motor accident.

5. The legalheirs of the said deceased Mr.A.T.Velayudham were impleaded as plaintiffs. The plaintiffs approached the first appellant-defendant to repay the balance amount of Rs.23 lakhs and the first appellant-defendant repaid only a sum of Rs.1 lakh to the plaintiffs.

6. Since the first appellant-defendant postponed the repayment of the balance amount, the plaintiffs were constrained to institute the suit for recovery of money based on the Sale Agreement entered into between the father of the plaintiffs and the first appellant-defendant.

7. The first appellant-defendant filed written statement denying the plaint averments. The Sale Agreement was denied and the sale consideration agreed between the parties were also denied. The possession handed over to the original plaintiff Mr.A.T.Velayudham was also denied



by the first appellant-defendant.

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8. It is contended by the defendants 2 to 5 that the plaintiffs' father had not paid Rs.20 lakhs and on 26.04.2013 itself, the Sale Agreement got lapsed. The father of the plaintiffs Mr.A.T.Velayudham had not acted upon as per the terms and conditions of the Sale Agreement and no notice was sent to the first appellant-defendant. Thus the plaintiffs have not taken any steps thereafter and thus the suit claim is to be rejected.

9. The Trial Court framed the following issues:-

(1) Whether the plaintiff is entitled for recovery of money as claimed by him ?

(2) Whether the plaintiff is entitled for relief of permanent injunction as claimed by him ?

(3) To what other relief the plaintiff is entitled ?

10. On the side of the plaintiffs, the first plaintiff was examined



as PW-1 and One Mr.Raja and Mr.Thangavel were examined as PW-2 and PW-3 respectively. Exs.A-1 to A-7 were marked on the side of the plaintiffs. On the side of the first appellant-defendant, the first appellant-defendant was examined as DW-1 and one Mr.Chinnasamy was examined as DW-2 and Ex.B-1 was marked on the side of the first appellant-defendant.

11. With reference to Issue No.1, the Trial Court made a finding that the father of the plaintiffs Mr.A.T.Velayudham and the first appellant-defendant were very much alive when the period of five months for execution of the sale got lapsed. During the lifetime of the father of the plaintiffs, the first appellant-defendant has not chosen to rescind the contract, since time was lapsed.

12. Accordingly, it is to be construed that the time is not an essence of contract. Thus the conduct of the parties can be inferred and the contract was subsisting during the lifetime of the father of the plaintiffs



Mr.A.T.Velayudham, who died on 13.02.2014. It is further proved before the Trial Court that the first appellant-defendant had received the advance amount of Rs.20 lakhs from the father of the plaintiffs late Mr.A.T.Velayudham. Since the advance amount received by the first appellant-defendant was admitted, the passing of consideration as per the Sale Agreement was also proved.

13. After the death of the plaintiffs' father, the first appellant-defendant had returned a sum of Rs.1 lakhs to the plaintiffs. That would also establish that the consideration was passed on by the deceased Mr.A.T.Velayudham to the first appellant-defendant pursuant to the Sale Agreement and after his death, the parties have decided not to act upon the Sale Agreement and returned the advance amount received by the first appellant-defendant. Accordingly, part amount of advance of Rs.1 lakh was paid by the first appellant-defendant to the plaintiffs.

14. Therefore, the Trial Court arrived a conclusion that the Sale



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Agreement was not acted upon and the parties also had decided not to execute the sale pursuant to the Sale Agreement and agreed that the advance amount received from the deceased Mr.A.T.Velayudham is to be returned back to the plaintiffs.

15. This being the factum established, the Trial Court considered granting of alternate relief of money claimed by the plaintiffs in the suit. As per the terms and conditions of the Sale Agreement, the sale consideration was fixed at Rs.51 lakhs, Earnest Money given at Rs.20 lakhs, possession was handed over to the father of the plaintiffs' Mr.A.T.Velayudham. Mr.A.T.Velayudham claimed that he spent a sum of Rs.3 lakhs for the development of the property and to convert the same for forming layout and the plots. The said sum of Rs.3 lakhs spent for developing the property was disputed by the defendants 2 to 5. During the lifetime of the said Mr.A.T.Velayudham, no steps were taken by the first appellant-defendant to get the contract enforced. It is further not in dispute that the time limit is fixed for execution of the sale was five months.



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16. Based on the facts and circumstances, the Trial Court arrived a conclusion that the plaintiffs and the first appellant-defendant agreed to settle the issues by not acting upon the Sale Agreement entered into between the father of the plaintiffs and the first appellant-defendant and further agreed to repay the advance amount received from the father of the plaintiffs.

17. The suit for recovery of money was filed within the time limit of three years and thus the Trial Court considered the issuance of pre-notice by the plaintiffs and the documents filed by them. In view of the fact that the first appellant-defendant agreed to return the advance amount received from the father of the plaintiffs, the Trial Court declined to grant the relief of permanent injunction.

18. In the absence of Conveyance Deed of title on the first appellant-defendant, no such relief needs to be granted. There was no scope



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for the first appellant-defendant to execute the Sale Deed in favour of the third parties and under those circumstances, the suit was decreed partly to an extent of Rs.19 lakhs along with 6% interest per annum to be paid to the plaintiffs from the date of suit till the date of realisation and consequently the suit was dismissed with regard to the relief of permanent injunction.

19. This Court is of the considered opinion that the admitted facts between the parties were considered by the Trial Court for forming an opinion that the advance amount towards sale consideration based on the agreement was passed on to the defendants 2 to 5, who in turn admitted the Sale Agreement entered into between the father of the plaintiffs and the first appellant-defendant. Further, it is proved that the first appellant-defendant repaid the advance amount of Rs.1 lakh to the plaintiffs, which was also admitted. Thus the Trial Court rightly formed an inference with reference to the contract between the parties and accordingly granted the relief for recovery of money. Regarding the relief of permanent injunction, since the Sale Agreement was not acted upon, the said relief was declined.



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20. Thus this Court do not find any infirmity in respect of the findings of the Trial Court in this regard and it is based on the facts and circumstances and the documents filed in the suit.

21. Accordingly, the the decree and judgment dated 15.03.2017 passed in OS No.72 of 2015 on the file of the learned Additional District Judge, Dharmapuri stands confirmed. Consequently, AS No.239 of 2017 stands dismissed. However, there shall be no order as to costs. The connected miscellaneous petition is also dismissed.

10-02-2023

Speaking Order/Non-Speaking Order.

Neutral Citation : Yes/No.

Internet : Yes/No.

Index: Yes/No.

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S.M.SUBRAMANIAM, J.

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To

The Additional District Judge,
Dharmapuri.

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