



S.A.No.801 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.801 of 2023
and
C.M.P.No.25021 of 2023

Prema Joy Clara
Appellant

...

Vs.

S.George

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 22.12.2022 in A.S.No.1 of 2021 on the file of the District Court, The Nilgiris at Udthagamandalam whereby confirming the judgment and decree dated 27.11.2019 passed in O.S.No.255 of 2015 on the file of the Subordinate Court at Udthagamandalam by allowing this Second appeal.

For appellant

: Mr.C.Prakasam



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For respondent : Mrs.Reshmi Christy

JUDGMENT

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The plaintiff, who had the suit for recovery of money and declaration been dismissed by both the Courts below, has approached this Court by filing this second appeal.

2. To appreciate the case on hand, it is necessary to set out the facts of this case which are hereinbelow and the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff had filed a suit in O.S.No.255 of 2015 on the file of the Subordinate Court, Udthagamandalam, for certain reliefs.

2.2. It was case of the plaintiff that he had engaged the services of the defendant for construction of a residential building on the land measuring 3.16 cents in R.S.No.399/1 (T.S.No. H/9/58) of Udthagamandalam town. They had entered into an agreement dated



13.09.2013. Under the said agreement, the defendant was to complete 21 items of work and inclusive of materials, the rate was fixed at a sum of Rs.2,000/- per sq.ft.

2.3. The plaintiff would submit that initially, the work was progressing without any hiccup, but thereafter, the work was progressing at a snail's pace and the defendant had exhibited inferior workmanship by using inferior materials. The plaintiff had set out the details in the plaint and thereafter, the defendant had submitted a bill for Rs.26,20,740/-being the bill for having constructed 1,310.37sq.ft. and the defendant had also added a sum of Rs.38,183/- which, he claimed towards supplemental work, thereby, totalling a sum of Rs.26,58,923/-.

2.4. It is the case of the plaintiff that she had paid the sum of Rs.24,30,000/- on various dates, the last of which was on 20.10.2014. Apart from the said sum, she had also paid a sum of Rs.14,000/- for



electricity deposits which had not been done by the defendant and which, the plaintiff had to do. That apart, the plaintiff would contend that she had also paid amounts for the purchase of electric pump set, electrical fittings, all of which, the defendant had undertaken to provide and had been included in the rate agreed to by the parties.

2.5. The plaintiff would further submit that she was living in a rental house and the defendant had promised to hand over the vacant possession of the ground floor before October 2014 and therefore, on the basis of this assurance, she had promised her landlord that she will vacate the rental premises by the end of the October 2014. However, the defendant had not adhered to the time schedule. When the plaintiff had contacted the defendant informing him of her decision to perform the house warming ceremony on 26.10.2014, the defendant had demanded the plaintiff to issue a cheque for Rs.3,00,000/- for handing over the keys of the house. The plaintiff had issued a cheque and thereafter, she had issued a direction for stopping



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payment of the alleged cheque.

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2.6. The plaintiff would further submit that the defendant had issued a legal notice dated 12.02.2015 demanding payment of Rs.3,00,000/- for the dishonoured cheque. This was suitably responded by the reply dated 26.02.2015 and thereafter, a frivolous rejoinder was also issued by the defendant.

2.7. The plaintiff would further submit that she had issued a cheque of Rs.5,00,000/- in favour of the defendant in February 2014 and thereafter, she had paid amounts in cash to the defendant between the month of February 2014 and March 2014. However, she had forgotten to take return of the cheque. Therefore, the plaintiff was shocked at the bill for Rs.26,81,345/-.

2.8. It is the case of the plaintiff that after construction, she



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had made enquiries about the defendant and came to know that he was not a licensed contractor. On the contrary, the defendant is a Municipal councillor affiliated to a powerful political party. The plaintiff would state that on several occasions, the defendant would threaten her. When the plaintiff had attempted to complete the work by hiring third party workers, the defendant had disrupted the work and also preferred a complaint before B1 Police station, Udthagamandalam. The plaintiff would further submit that she had made enquiries about valuation of the work done by the defendant and she was informed that the total cost will be less than Rs.24,00,000/-. Therefore, the contention of the plaintiff is that she had paid Rs.1,10,000/- in excess and she also reserves the right to file a suit for damages for poor workmanship. She had lodged a grievance petition to the Chief Minister Cell on 29.05.2015 and during the enquiry conducted by the Inspector, B1 Police Station, Udthagamandalam on 19.07.2015, both the plaintiff and the defendant, in writing, had agreed that they would abide and settle the amount assessed by the



PWD Engineer. Therefore, the plaintiff had come forward with the suit in question.

2.9. The defendant had filed a written statement *inter alia* denying the allegations contained in the plaint, particularly, the fact that the execution of the work was poor and sloppy. The defendant would submit that the plaintiff has not stated the basis upon which she is demanding a sum of Rs.1,10,000/- . If the building in question is inspected and measured, the value can be calculated which would be more than what the defendant had claimed. The defendant would submit that he had done earth work, foundations, wells, head tanks, work done for second floor of the building, shifting of the materials, grill work and wood work. The defendant and the plaintiff had measured the work executed by the defendant and based on this measurement, the defendant raised the bill. Therefore, there is no cause of action and the defendant prayed for the suit to be dismissed.



TRIAL COURT:

3. The learned Subordinate Judge had framed the following issues:

(i) Whether the court fee paid is deficit?

(ii) Whether the plaintiff is entitled for the declaratory relief as prayed for?

(iii) Whether the plaintiff is entitled for the suit claim?

(iv) To what other relief?

4. The plaintiff had examined herself as P.W.1 and marked Exs.A1 to A10. On the side of the defendant, the defendant had examined himself as D.W.1 but did not mark any documents.

5. The Trial Court had dismissed the suit against which the plaintiff has filed an appeal in A.S.No.1 of 2021 on the file of the District Court, Udthagamandalam. The learned Judge has also



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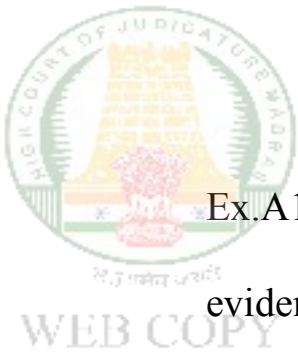
dismissed the appeal.

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8. Heard the learned counsel for the appellant.

DISCUSSION:

9. Both the Courts below have come to the conclusion that a mere perusal of the Advocate Commissioner's report submitted which has been prepared after the visit of the PWD Engineer and the Private Engineer, would clearly show that the defendant had put up a total construction of 1,310.37 sq.ft. This is even as per the plaintiff's private Engineer's report - Ex.A10. This Engineer has stated that the area of residential building was 874.62 sq.ft. and in addition to that, RCC Portico measuring an extent of 199.13 sq.ft. and RCC Balcony measuring 202.01 sq.ft. and RCC staircase measuring 71.25 sq.ft. totally measuring an extent of 1,347.01 sq.ft has been constructed. It is based on this report and it is for this measurement that the defendant had made a claim. However, from a perusal of Ex.A2 and



Ex.A10 and Commissioner's report with photographs, it is clearly evident that the PWD Engineer's report would show that the plaintiff has constructed more than the sanctioned area.

10. The plaintiff has not given any details as to how she has calculated that the sum of Rs.1,10,000/- is an excess payment. There is no statement of accounts given. The plaintiff who has come to the court with a specific case that there has been a over-charging on the part of the defendant, had failed to prove with evidence as to how there is over-charging.

11. Both the Courts below have concurrently held against the plaintiff and I see no reason to overturn the well-considered judgment and decree of the Courts below, particularly, when the plaintiff had not made out any substantial question of law.

Accordingly, this second appeal is dismissed. Consequently,



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connected C.M.P. stands closed. No costs.

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Index : Yes/No
Speaking order/non-speaking order
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To

1. The District Judge,
Nilgiris, Udthagamandalam.
- 2.The Subordinate Judge,
Udhagamandalam.
- 3.The Section Officer, V.R.Section, High Court, Madras.

P.T.ASHA, J.,

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