



S.A.No.715 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.715 of 2023
and
C.M.P.No.22430 of 2023

Atheeshvar

... Appellant

Vs.

1. K.N.Harikrishna
2. Krishna Kasturi

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 23.01.2023 in A.S.No.3 of 2022 on the file of the II Additional Subordinate Court, Coimbatore and confirming the judgment and decree dated 03.12.2021 in O.S.No.132 of 2019 on the file of the Principal District Munsif Court, Coimbatore and consequently decree the suit in O.S.No.132 of 2019 on the file of the Principal District Munsif Court, Coimbatore.

For appellant : Mr.T.Saikrishnan

For respondents : No appearance



JUDGMENT

The unsuccessful plaintiff before both the Courts below has filed this second appeal.

2. The facts which have given rise to this second appeal are set out hereinbelow and the parties to the proceedings are referred to in the same ranking as before the Principal District Munsif, Coimbatore.

FACTS OF THE CASE:

2.1. The plaintiff has filed a suit in O.S.No.132 of 2019 on the file of the Principal District Munsif Court, Coimbatore, for injunction restraining the defendants, their men and agents or anyone claiming through them, in any manner, from interfering with his peaceful possession and enjoyment of the suit schedule property.

2.2. It is the case of the plaintiff that he had taken on lease the suit schedule flat for a period of 11 months from the landlady Kathyayini Yellapa Palegar, who is a resident of Bangalore. The lease deed is dated 28.03.2018.



2.3. The plaintiff would further submit that the defendants 1 and 2 who are the husband and wife, had entered into an agreement to purchase the said flat and two registered sale deeds bearing Nos.7682/2018 and 7683/2018 were entered into between the said Kathyayini Yellapa Palegar and the defendants 1 and 2. These two deeds relate to the flat and the common maintenance in the property. The total purchase value was fixed at a sum of Rs.23,50,000/-, out of which, a sum of Rs.7,86,000/- was to be paid at the time of the registration of the sale deed and the remaining amount was to be paid within one month from the date of registration.

2.4. The plaintiff would contend that the defendants have not kept of the schedule and despite several reminders, they did not come forward to make the payment. The defendants 1 and 2, in fact, agreed to withdraw from the arrangement and agreed to receive back the sum of Rs.7,86,000/-. In fact, they had agreed to go over to Coimbatore to cancel the deed. The plaintiff, thereafter, agreed to purchase the said flat for a total consideration of Rs.24,00,000/- and had undertaken to



repay the sum of Rs.7,86,000/- to the defendants paid by them as advance and adjust the same from and out of this consideration.

2.5. In fact, the plaintiff and the landlady had travelled to Jharkhand to meet the defendants and had paid a sum of Rs.9,36,000/- to the defendants which was in excess of the advance repayable by them. Once again, the defendants had assured to go over to Coimbatore to cancel the sale deed. In pursuance of this understanding, an agreement to cancel the sale deed was entered into between the landlady and the defendants 1 and 2 and under this agreement, the defendants had agreed to execute the cancellation deed within a period of one month from the date of agreement. However, the defendants once again failed to comply with their promise. Thereafter, the landlady had executed the agreement of sale in favour of the plaintiff and a sum of Rs.9,50,000/- was paid to the defendants by the plaintiff and a sum of Rs.50,000/- was paid towards caution deposit. These amounts were given credit towards sale consideration of Rs.24,00,000/-. Simultaneously, the landlady had also extended the lease by making an



endorsement on the rear of the first page of the rental agreement dated 28.03.2018.

2.6. The plaintiff would submit that thereafter, he started receiving threatening calls from the defendants demanding that he should vacate the suit flat and give up the idea of purchasing it. The plaintiff would further submit that he is in possession and enjoyment of the suit schedule flat and the attempts, if any made by the defendants to put him threat, in action, the plaintiff has come forward with the instant suit.

2.7. The suit schedule flat has an undivided extent of 491 sq.ft. out of 9,037 sq.ft. of undivided land together with the flat bearing address A2, Casa Bianca, Platina Properties, Veeriyampalayam Road, Kalapatti comprised in Survey No.803/1A, Kalapatti Village, Coimbatore.



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2.8. The defendants, on entering appearance, had filed a written statement denying the contents of the plaint and setting out that the suit is nothing but collusive endeavour by both the landlady and the plaintiff who has set his eyes over the suit schedule property purchased by the defendants. The defendants would submit that they are senior citizens residing in Jamshedpur and are not in a position to frequently travel to Coimbatore. The plaintiff and the landlady are attempting to take advantage of the situation.

2.9. The defendants would further submit that the said landlady Kathyayini Palegar is the proprietrix of M/s.Platina Properties and engaged in the business of building and developing the residential apartments. The residential apartment in which the suit schedule flat is situate has been developed by her. The defendants would submit they had agreed to purchase the suit schedule flat and after negotiation, the cost of the apartment and the undivided extent of land was fixed at a sum of Rs.49,00,000/-. They had executed an agreement of sale dated 18.07.2018 and on the date of execution of the sale agreement, a sum of



Rs.25,00,000/- was paid as an advance. The balance of Rs.24,00,000/- was payable within a period of 3 months from the date of consideration.

The defendants would submit that thereafter, on 07.08.2018, they had paid further sum of Rs.10,00,000/- to Kathyayini Palegar.

2.10. On 29.08.2018, a registered construction agreement was entered into between said Kathyayini Palegar and the defendants, in which, the total consideration was shown as Rs.23,53,000/- and not Rs.49,00,000/-. When the defendants enquired with the landlady, she had informed them that the value of sale consideration was deliberately reduced in the construction agreement to avoid payment of huge capital gains. The defendants had refused this unilateral change. However, the landlady was adamant about showing Rs.23,50,000/- as the sale consideration. The defendants, left with no other alternative, were constrained to execute the construction agreement showing lesser sum on 29.08.2018. On the same day, the landlady had also executed the sale deed in respect of 451 sq.ft. – undivided share. The defendants had paid a sum of Rs.2,42,000/- towards the consideration and further



advance of Rs.44,000/-.

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2.11. The Sub-Registrar, Gandhipuram, had refused to release the document as the flat had not been included in the sale deed. The sale deed is therefore, not released. Thereafter, the value of the building was included by the Sub Registrar office and an additional stamp duty of Rs.1,64,500/- and the registration fees of Rs.94,000/-, totally Rs.2,58,500/- was also paid by the defendants on 29.01.2019.

2.12. It is the case of the defendants that the entire sum of sale consideration Rs.49,00,000/- was paid on different dates which has been set out in the written statement. On the receipt of the entire sale consideration, the possession of the apartment was also handed over to the defendants. As the apartment was a fully furnished one, an additional sum of Rs.3,60,000/- was paid at the request of the landlady, on 26.09.2018. Therefore, totally, the landlady had received a sum of Rs.52,60,000/- from the defendants as on 26.09.2018.



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2.13. In this background, the landlady had contacted the defendants on the second week of October 2018 informing them that the Income Tax Department had commenced a scrutiny of her account which includes the sale transactions in respect of the Casa Bianca Project where the suit schedule flat is situate. She had informed the defendants that since the sale consideration was less than the other apartments, there was a strong possibility of their taking action against the sale of the apartment and therefore, in order to help the said landlady and on the advice of her auditors, the plaintiff had executed a agreement for cancelling the sale deed showing that the second respondent had given back a cheque of Rs.7,86,000/- was given by the landlady to the defendants. This cheque was however, dishonoured on account of insufficiency of funds.

2.14. The defendants contention is that, said Kathyayini Palegar and the plaintiff, thereby, visited the defendants in the last week of October 2018 and obtained their signatures in the documents prepared by them by stating that the said Kathyayini Palegar had prepared power



of attorney in respect of the suit schedule flat to liaison with the Income Tax Department. Accordingly, these signatures were obtained in blank papers. The defendants had clearly stated that they had no intention of selling away the suit schedule flat. The defendants would submit that pursuant to the agreement for execution of cancellation of the sale deed, the defendants had refunded a sum of Rs.7,86,000/- to the said Kathyayini Palegar with a covering letter dated 14.03.2019. The defendants would submit that though such an agreement was entered into, they continued to be in possession and enjoyment in the suit schedule property and at no point in time, was the plaintiff in possession of the suit property. The plaintiff is attempting to take advantage of the fact that the defendants are residing in Jamshedpur, to try and enter possession of the suit schedule property. Therefore, the defendants sought dismissal of the suit.

TRIAL COURT:

3. The Trial Court has framed the following issues:

1. வாதி தாவா சொத்தின் கவாதீனம் மற்றும் அனுபவத்தில் உள்ளாரா?



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2. வாதி தாவா வழக்கில் கோரியுள்ள பரிகாரம் கிடைக்கத்தக்கதா?
3. இதர பரிகாரம் என்ன?

4. The plaintiff had examined himself as P.W.1 and marked Exs.A1 to A26. On the side of the defendants, the power of attorney of the defendants had entered the box and marked Exs.B1 to B34.

5. Ultimately, the learned Judge had dismissed the suit.

LOWER APPELLATE COURT:

6. Aggrieved by the same, the plaintiff had preferred an appeal in A.S.No.3 of 2022 on the file of the II Additional Subordinate Court, Coimbatore. The learned Judge has also confirmed the judgment and decree of the Trial Court. Aggrieved by the concurrent judgment and decree, the plaintiff had preferred the above second appeal.



7. Mr.Sai Krishnan, learned counsel appearing on behalf of the appellant, would submit that the defendants had never been in possession and enjoyment of the suit schedule property and that the plaintiff had taken possession as a lessee even prior to the agreement entered into between the plaintiff and the defendants. He would further submit that the defendants have not proved their possession and enjoyment of the property, whereas, the plaintiff has filed the documents like electricity consumption charges and receipts, cable TV charges, etc., to show his possession.

8. Heard the learned counsel appearing for the appellant and perused the materials on record.

DISCUSSION:

9. It appears that, on 28.03.2018, when the alleged lease agreement was entered into between the plaintiff and the landlady, the flat was still under construction. In fact, even in the agreement of sale purported to have been executed between the plaintiff and the said



Kathyayini Palegar on 07.12.2018 (EX.A5) the schedule of property has been clearly stated as follows:

“the parties agrees with the possession in respect of the suit schedule B - undivided share of land shall be handed over to the purchaser after the completion of the construction”

which clearly indicates that even on 07.12.2018, the flat had not been fully constructed.

10. Therefore, the contention of the plaintiff that he had entered into Ex.A1 - rental agreement with the landlady and has been put in possession in the property appears to be a concocted and fabricated one and the intention appears to somehow take possession of the suit property. The rental agreement (Ex.A1), electricity consumption charges receipts, cable TV charges, etc., appear to be fabricated to buttress the plaintiff's case. The defendants have denied their signatures in the agreement dated 23.11.2018 and the same has not been proved by the petitioner. The fact that the plaintiff has fabricated



the rental agreement is clearly evident from a perusal of Ex.A5 which is yet another document executed by Kathyayini Palegar in favour of the plaintiff.

11. The suit is one for bare injunction and it is imperative that the plaintiff who seeks injunction should come to Court with clean hands. In the instant case, the conduct of the plaintiff in the light of the contradictory settlement in Ex.A1 and Ex.A5 has clearly shown that he had created the lease agreement and was not in possession and enjoyment of the suit schedule property, particularly, when his entire case is that he had entered possession of the property through Ex.A1 - sale agreement.

12.Both the Courts below have in great detail appreciated the evidence on record and come to the conclusion that the plaintiff is not entitled to the property. I see no reason to disagree with the concurrent judgment and decree of both the Courts below.



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Accordingly, this second appeal is dismissed. Consequently, the connected C.M.P. stands closed. No costs.

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

To

1. The II Additional Subordinate Judge,
Coimbatore.
2. The Principal District Munsif,
Coimbatore.
3. The Section Officer, V.R. Section, High Court, Madras.



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P.T.ASHA, J.,

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