



CMA.No.2347 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM: JUSTICE N.SESHASAYEE

CMA.No.2347 of 2023

1.K.Indrajit

2.J.Rajagopalan

... Appellants

-Vs-

1.A.L.Selvakumar

2.Mrs.Annapoorani

3.T.Arunachalam

...Respondents

Prayer: Civil Miscellaneous Appeals filed under Order 43 Rule 1 CPC, against the Judgment and Decree dated 31.01.2018 made in A.S.No.384 of 2014 on the file of the VII Additional Judge, City Civil Court, Chennai reversing the fair and decreetal order dated 31.07.2014 made in I.A.No.942 of 2014 in O.S.No.4615 of 2011 on the file of the XIII Assistant Judge, City Civil Court, Madras.

For Appellants : Mr.R.Asokan

For R1 : Mr.N.Nagusah

For R2 & R3 : Notice D/w Vide order dt.03.11.2023



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JUDGMENT

The appellants are the defendants in O.S.No.4615 of 2011 on the file of the XIII Assistant City Civil Court, Chennai.

2.This appeal is preferred under certain peculiar set of facts;

- a) According to the plaintiff, he owned 50% of the A schedule property, and his wife, arrayed as the third defendant in the suit, owned the entire B schedule property. On 27.10.2006, the plaintiff had entered into a sale agreement with the first defendant for the sale of both his share in the A schedule property as well as his wife's share in the B schedule property for a total consideration of Rs.1.10 Cores. Out of this sale consideration, Rs.50.0/- was paid as an advance by the first defendant, leaving the balance payable at Rs.60,00,000/-.
- b) On 02.02.2007, the plaintiff's wife executed a sale deed as regards B schedule property in favour of the 1st and 2nd defendants. The sale consideration for this property was Rs.36.0 lakhs, and this amount was adjusted against the advance amount paid by the first



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defendant.

- c) While so, on 05.02.2007, at the instance of the first defendant, the plaintiff is stated to have executed a power of attorney in favour of the second defendant (the father of the first defendant) vis-a-vis the plaintiff's share in the A schedule property.
- d) According to the plaintiff, sometime in December 2007, the second defendant had exercised his power under the said power of attorney and had sold the suit property in favour of the first defendant. As regards the plaintiff's 50% share in the A schedule property, the first defendant did not pay the balance sale consideration of Rs.60,00,000/-. Instead, he had issued three post-dated cheques for a total sum of Rs.30.0 lakhs, and when they were presented they were dishonored due to insufficiency of funds in the account of the first defendant. The plaintiff, therefore, issued a notice on the first defendant to make the payment.
- e) According to the plaintiff, the defendants would take certain inconsistent positions. The sale deed which the second defendant had executed in favour of the first defendant disclosed the sale



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consideration as Rs.45.0 lakhs for which the first defendant had issued a cheque for Rs. 30,00,000/-. With regard to the payment of the balance sale consideration, the first defendant would contend that he had settled a debt liability which the plaintiff had with Tamil Nadu Mercantile Bank to a tune of Rs.60,00,000/-.

It is in these circumstances, confused by the statements made by the defendants, the plaintiff laid a suit for rendition of accounts. The trial has commenced and midway through the trial, the defendants in the suit had taken out I.A.No.942 of 2014 for rejection of plaint under Order 7 Rule 11 CPC. The trial Court, however, has chosen to address the issue raised and decided to return the plaint under Order 7 Rule 10 on the ground that it neither has pecuniary jurisdiction nor the territorial jurisdiction to entertain the suit.

3. This order, apparently was passed under Order 7 Rule 10 is appealable under Order 43 Rule 1 CPC. Pursuant to the same, the plaintiff opted to institute A.S.No.384 of 2014 and vide its Judgment dated 31.01.2018, the first appellate Court remanded the matter back to the trial Court and



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this order of remand is under challenge in this appeal.

4. Heard both sides. It may be noted that on that date, the trial Court may not have had the pecuniary jurisdiction, but it does have the pecuniary jurisdiction as well as the territorial jurisdiction now. Therefore, the very foundation on the basis of which the trial Court has dealt with the matter is erroneous. Turning to the order of remand, this Court cannot find any serious flaw and the issue that has to be decided in I.A.No.942 of 2014 has not yet been decided. This suit is pending since 2011 and the trial has commenced.

5.1 The trial Court/the XIII Assistant City Civil Court, Madras is now required to consider I.A.No.942 of 2014 pursuant to the order of remand passed by the appellate Court and is also required to ascertain whether it is a ruse to delay the trial. It is also required to ascertain the applicability of paragraphs 22 and 23 of the judgement of the Hon'ble Supreme Court in the case of ***Ram Prakash Gupta Vs Rajiv Kumar Gupta & Others*** [(2007) 10 SCC 59].



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5.2 The trial court is further directed to ascertain if the plaint is correctly valued, and if after ascertaining the value, any additional court fee is required to be paid, the trial Court may not reject the plaint immediately, but is required to give the plaintiff reasonable time to pay the deficit Court fee. The Civil Miscellaneous Appeal is disposed of accordingly. No costs.

09.11.2023

Tsg

To

- 1.The VII Additional Judge, City Civil Court, Chennai.
- 2.The XIII Assistant Judge, City Civil Court, Madras.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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N.SESHASAYEE, J.,

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