



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 26.09.2024

CORAM:

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

C.S.No.881 of 2015

R.L.Narasimhan

... Plaintiff

Vs.

1.S.Ravichandran

2.M/s.Selvi Construction Company
a partnership firm,
represented by its Managing Director
Mr.S.Ravichandran
No.11/13, Sengani Amman Koil Street
Maduvankarai, Guindy
Chennai-600 032.
(2nd defendant was impleaded as per
order dated 22.12.2021 in A.No.330 of 2020)

... Defendants

Prayer: Civil Suit filed under Order VII Rule 1 of CPC and IV of Original
Side Rules praying for the following judgment and decree:

i) directing the defendant to pay a sum of
Rs.80,10,000/- together with interest (from 03.07.2012 to
04.08.2015) in all interest amounting to Rs.29,63,700/- in



all for a sum of Rs.1,09,73,700/-.

ii) costs of the suit;

For Plaintiff : Mr.A.R.Balaji

For defendants : Set Exparte

J U D G M E N T

The suit is filed for recovery of a sum of Rs.80,10,000/- along with interest calculated at the rate of 12% per annum viz., Rs.29,63,700/- in all a sum of Rs.1,09,73,700/- and for costs.

2.The brief facts of the case of the plaintiff are as follows:

The plaintiff is the absolute owner of the property viz., the entire plot of vacant land in Plot No.2, comprised in Survey No.200/2D1 at No.116, Injambakkam Village, Vettuvankeni II Avenue, Tambaram Taluk, now Sholinganallur Taluk, Kancheepuram District, measuring an extent of 4590 sq.ft. and as per patta measuring an extent of 5,384 sq.ft. patta No.1469, Present Patta No.4917. The defendant had negotiated for the purchase of the said property from the plaintiff for his personal use and as such the price was



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fixed at Rs.1,34,60,000/-. At the request of the defendant, a memorandum of understanding was entered into on 03.07.2012, wherein for the convenience of the defendant, in the said memorandum of understanding the sale consideration is mentioned as Rs.83,00,000/- and out of which the defendant had paid a sum of Rs.35,00,000/- to the plaintiff and agreed to pay the balance sum of Rs.48,00,000/- by way of postdated cheques viz., (i) bearing nos.088230 for a sum of Rs.15,00,000/- and (ii) a further cheque bearing No.088231 for a sum of Rs.34,00,000/- both drawn on Vijaya Bank, Abhiramapuram Branch. The sale deed in respect of the aforesaid property was also executed on the very same day. For the accounting purpose, the defendant stated that the memorandum of understanding has drawn up showing the total sale consideration as Rs.83,00,000/- only, but the actual sale consideration was fixed at Rs.1,34,60,000/- and the same is incorporated in the sale deed. Clause 1 of the sale deed recites as follows:

In pursuance of the above said promises and in consideration of a sum of Rs.1,34,60,000/- being the sale consideration for the sale of the schedule mentioned property paid by the purchaser to the vendor by way of cheques on various dates, the vendor doth hereby admits and acknowledges the receipt of the said sale consideration



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of Rs.1,34,60,000/- and relieve the purchaser from further payment and the vendor do hereby sell, transfer and assign the schedule mentioned property".

wherein it is clearly and categorically admitted that Rs.1,34,60,000/- paid by way of cheques, but on the said date, only a sum of Rs.35,00,000/- was paid by the defendant to the plaintiff as reflected from the memorandum of understanding and further sum of Rs.99,60,000/- agreed to be paid towards the balance sale consideration. Believing the defendant's representation and the trust exerted on the defendant, the plaintiff had executed the sale deed, without receiving the full sale consideration, which is also reflected in the memorandum of understanding.

2.01. When the plaintiff insisted for the payment of the balance sale consideration, the defendant represented to the plaintiff that he will be paying the balance by way of cash and got back the said two cheques. After the sale deed was executed in favour of the defendant and after the defendant received back the said cheques, by promising to pay the balance amount by cash, the defendant have paid the following amounts by way of cash:



13.08.2012	Rs.7,00,000/-	cash
04.10.2012	Rs.1,00,000/-	cash
16.10.2012	Rs.8,50,000/-	cash
10.11.2012	Rs.2,00,000/-	cash
25.12.2012	Rs.1,00,000/-	cash

In all, the defendants have paid further sum of Rs.19,50,000/- after the execution of the sale deed out of the balance sale consideration of Rs.99,60,000/-. Towards the part payment of the sale consideration, the defendant had issued a cheque dated 31.10.2012 for a sum of Rs.10,00,000/- in favour of the plaintiff and another cheque dated 31.10.2012, for a sum of Rs.14,00,000/- in favour of the plaintiff. The said two cheques for the sum of Rs.24,00,000/- also returned unpaid as insufficient funds". As such the entire liability of Rs.80,10,000/- is still due and payable by the defendant. In spite of repeated demands made by the plaintiff to pay the balance sale consideration of Rs.80,10,000/-, the defendant have failed and neglected to pay the said amounts. Since the suit property is commercial in nature, the defendant is also liable to pay interest calculated at the rate of 12% per annum from the date of execution of sale deed viz., from 03.07.2012 which works out to Rs.29,63,700/-. Since the defendant failed and neglected to pay the balance sale consideration of Rs.80,10,000/- in spite of repeated



demands, the plaintiff issued a legal notice to the defendant on 04.07.2015 and even after the receipt of notice, the defendant has not chosen either to pay the said amount or reply to the notice. Hence the suit.

3. The brief averments made in the written statement are as follows:

The defendant is neither the Managing Director of M/s.Selvi Construction Company nor he is the director of any company and in any manner associated with the company by name M/s.Selvi Construction Company. The suit has been instituted by the plaintiff against the Managing Director of M/s.Selvi Construction Company and has wrongly made S.Ravichandran as the party to the above suit in the capacity as its Managing Director and hence the suit is liable to be dismissed on the ground of mis-joinder of party. The defendant has purchased vacant land bearing Survey No.200/2D1 at No.116, Injambakkam Village, Vettuvankeni II Avenue, Tambaram Taluk, now Sholinganallur Taluk, Kancheepuram District from the plaintiff and not as alleged in para 3 of the plaint as the same is not true. The defendant denies that the said property was purchased for his personal use. The said property being vacant land was purchased by M/s.Selvi



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Construction Company, a partnership firm in the business of building construction and land development represented by three partners, S.Ravichandran, being one of the partner, for a valuable consideration from the plaintiff and not as alleged in the para 4 and 5 of plaint.

3.01. A memorandum of understanding dated 03.07.2012 was entered into between the plaintiff and the partnership firm for purchasing the property at Rs.83,00,000/- of the plaintiff, but the sale consideration was further negotiated by the plaintiff and since he refused to sell the property and demanded higher sale consideration and if not sought for cancellation of the MOU, the partnership firm after fresh negotiation with the plaintiff agreed upon Rs.1,34,60,000/- as the new sale price and not as stated in para 4 & 5 of the plaint. The entire sale consideration of a sum of Rs.1,34,60,000/- was paid by Selvi Construction Company, a partnership firm to the plaintiff by way of cheque and cash and the receipt of the entire amount was acknowledged by the plaintiff and sale deed was executed and registered by him on 13.08.2012 and the plaintiff was relieved from any further payment with respect to the said sale transaction. Hence the



partnership firm had purchased the property on payment of the entire sale consideration to the plaintiff and there is no further amount payable by the partnership firm to the plaintiff. The plaintiff has suppressed the receipt of payment and has instead come before this Court without disclosing the true facts and hence the plaintiff has not come forward with clean hands.

3.02. The plaintiff had only after receiving the entire sale consideration of a sum of Rs.1,34,60,000/- out of which Rs.35 lakhs by way of cheque and balance amount of Rs.92,60,000/- were paid periodically by way of cash and the last of such cash payment of Rs.7,00,000/- was made before execution of the sale deed on 13.08.2012. Hence the allegation that the balance sale consideration of Rs.80,10,000/- is still due and payable is false and frivolous. The entire amount has been paid and acknowledged by the plaintiff. The plaintiff had advanced certain amount as loan to the partnership firm M/s.Selvi Construction Company, out of which only a sum of Rs.15,00,000/- was liable to be repaid as on 01.03.2013. The said amount was not paid to the defendant for the reason it was agreed between the parties that since the said land that was sold had pending litigation before



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the District Munsif Court, Alandur which was not disclosed by the plaintiff to the defendant before purchase of the property, hence the plaintiff agreed during March 2013 not to insist upon the said sum of Rs.15,00,000/- which he had accepted to receive after completion of the court proceedings. The plaintiff had agreed to the above and cooperate for conducting the suit in O.S No.57 of 2013 on the file of the District Munsif Court at Alandur. The plaintiff has conveniently not disclosed the above said fact and instead has filed the present suit with a malafide intention. Hence the suit is liable to be dismissed with exemplary costs.

4. Though the 1st defendant filed his written statement, he had not chosen to appear before this Court and hence, the 1st defendant was set exparte on 07.07.2022. Though summons was served on the 2nd defendant company, no one appeared on behalf of it and hence, the 2nd defendant was set exparte on 07.01.2022.

5. On the side of the plaintiff, the plaintiff examined himself as examined as P.W.1 and marked Ex.P.1 to Ex.P.6.



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6. Heard the learned counsel for the plaintiff and perused the records.

7. P.W.1, in his evidence stated that the plaintiff is the absolute owner of the suit schedule property and the defendant had negotiated for the purchase of the said property from the plaintiff for his personal use and as such the price was fixed at Rs.1,34,60,000/-. At the request of the defendant, a memorandum of understanding (Ex.P1) was entered into between the plaintiff and the defendant on 03.07.2012, wherein for the convenience of the defendant, in the said memorandum of understanding, the sale consideration is mentioned as Rs.83,00,000/- and out of which, the defendant had paid a sum of Rs.35,00,000/- to the plaintiff and agreed to pay the balance sum of Rs.48,00,000/- by way of postdated cheques viz., (i) bearing nos.088230 for a sum of Rs.15,00,000/- and (ii) a further cheque bearing No.088231 for a sum of Rs.34,00,000/- both drawn on Vijaya Bank, Abhiramapuram Branch. The sale deed in respect of the aforesaid property was also executed on 13.08.2012 in favour of the defendants. Ex.P2 is the certified copy of the sale deed dated 13.08.2012. For the accounting purpose,



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the defendant stated that the memorandum of understanding has drawn up showing the total sale consideration as Rs.83,00,000/- only, but the actual sale consideration was fixed at Rs.1,34,60,000/- and the same is incorporated in the sale deed. When the plaintiff insisted for the payment of the balance sale consideration, the defendant assured to pay the balance by way of cash and got back the said two cheques. Thereafter, the defendant has paid a sum of Rs.19,50,000/- by way of cash on various dates out of balance sale consideration of Rs.99,60,000/-. Towards part payment of sale consideration, the defendant had issued a cheque dated 31.10.2012 for a sum of Rs.14,00,000/- and another cheque dated 31.10.2012 for a sum of Rs.10,00,000/- and the same was returned unpaid as "insufficient funds". Ex.P3 is the original cheque bearing No.089560 along with return memo. Ex.P4 is the original cheque bearing No.089559 along with return memo. The entire liability of Rs.80,10,000/- is still due and payable by the defendants. Since the suit property is commercial in nature, the defendant is also liable to pay interest calculated at the rate of 12% per annum from the date of execution of sale deed viz., from 03.07.2012 which works out to Rs.29,63,700/-. Since the defendants failed and neglected to pay the balance



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sale consideration of Rs.80,10,000/- inspite of repeated demands, the plaintiff issued a legal notice to the 2nd defendant on 04.07.2015. Ex.P5 is the legal notice with acknowledgment card. Even after the receipt of notice, the 2nd defendant has not chosen either to pay the said amount or reply to the notice. Ex.P6 is the statement of account for the period from 01.04.2012 to 31.03.2013. Hence the suit.

8. From the evidence of P.W.1 and the documents filed, it is proved that the defendants had entered into a sale agreement in respect of the suit schedule property with the plaintiff for a total consideration of Rs.1,34,60,000/- and even after execution of a sale deed in favour of 1st defendant represented by its Managing Partner, the defendants had failed and neglected to pay the balance sale consideration of Rs.80,10,000/-. Though the defendants were served summons, they had not entered appearance, and hence they were set exparte. Therefore, the evidence of P.W.1 and documents filed on behalf of the plaintiff remain unchallenged and there is no rebuttal evidence against the case of the plaintiff. Hence, the plaintiff has proved his case.



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9. In the result, the suit is decreed as prayed for with costs.

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Index : Yes/No
Speaking/Non-speaking order
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Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Date	Description
1.	P-1	03.07.2012	Original Memorandum of understanding
2.	P-2	13.08.2012	Certified copy of sale deed
3.	P-3	31.10.2012	Original Cheque bearing No.089560 along with return memo
4.	P-4	31.10.2009	Original cheque bearing No.089559 along with return memo
5.	P-5	04.07.2015	Office copy of the legal notice along with acknowledgment card
6.	P-6		Statement of accounts issued by the State Bank of India, Adyar Branch, Chennai.

Witnesses examined on the side of the plaintiff:

P.W.1. - Mr. R.L.Narasimhan



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A.A.NAKKIRAN,J

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