



SA.No.330 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2024

CORAM:

THE HON'BLE MRS JUSTICE T.V.THAMILSELVI

SA.No.330 of 2024
and
CMP.No.9916 of 2024

G.Venkataraman

...Appellant

Vs.

M/s.Great Akhshaya Constructions Ltd.
Represented by its Branch Manager
Mr.K.Sundararajan

.. Respondent

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 05.01.2024 passed by the Learned Subordinate Judge, Alandur in AS.No.10 of 2022 reversing the Decree and Judgment passed in counter claim OS.No.314 of 2015 dated 10.01.2018 by the Learned Additional District Munsif at Alandur.

For Appellant : Mr.GV.Sridharan

For Respondent : Mr.P.Krishnan



SA.No.330 of 2024

JUDGMENT

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The appellant herein is the plaintiff in OS.No.314 of 2015 on the file of the Additional District Munsif Court, Alandur. He filed the said suit before the Trial Court for the relief of permanent injunction and other consequential benefits against the defendant/respondent herein.

2. Heard the learned counsel for the appellant and the learned counsel for the respondent.

3. For the sake of convenience, the parties will be arrayed as described before the Trial Court.

4. According to the plaintiff, he is the absolute owner of the property and also enjoyed the land and building at Old No.163, New No.103, Sangam Road, Lakshmipuram, Chrompet, Chennai as described in the plaint schedule. As he was in financial crisis, the plaintiff was introduced by the mediator - one Mr.Kuttalingam. The said mediator took the plaintiff to the defendant along with all the original title deeds. The plaintiff entered into an



SA.No.330 of 2024

unregistered Memorandum of Understanding dated 17.05.2014 with the defendant. According to the plaintiff, the scheduled mentioned property was given as a collateral security for an amount of Rs.25,00,000/- for the loan availed by the plaintiff. But, it was recorded in the said Memorandum of Understanding as a sale consideration after initial terms were agreed between the parties. Thereafter, the defendant tried to grab the property and caused interference and he also directed the plaintiff to handover the vacant possession. Hence the suit.

5. Before the Trial Court, the plaintiff did not subject himself for further cross and remained ex-parte. Hence, the suit was dismissed for default. Thereafter, a counter claim was filed by the defendant. Ultimately, the counter claim was dismissed by the Trial Court by judgment and decree dated 10.01.2018.

6. As against the same, an appeal was preferred by the defendant in AS.No.10 of 2022 before the Subordinate Court, Alandur. Before the First Appellate Court, the contention of the defendant was that he purchased the



SA.No.330 of 2024

suit property by way of sale deed dated 19.05.2014, that the said sale deed was not put to challenge by the plaintiff in a Court of Law and that however, the Trial Court dismissed the counter claim as erroneous and unsustainable. Considering the submissions made by the defendant, the First Appellate Court allowed the appeal by setting aside the decree passed by the Trial Court dated 10.01.2018. Consequently, the counter claim was allowed. Challenging the same, the plaintiff has approached this Court by preferring this Second Appeal.

7. Learned Counsel for the Plaintiff submits that without any proof, either oral or documentary, the defendant claimed title over the suit property based upon the said sale deed dated 19.05.2014 and the same was held by the Trial Court to be an erroneous one. Further, he would submit that the counter claim made by the defendant was not accepted by the plaintiff. The defendant ought to have filed a suit for declaration and recovery of possession. Instead, he filed a counter claim in the suit filed by the plaintiff and obtained the decree before the First Appellate Court, which is, as such, an erroneous one and is liable to be set aside.



SA.No.330 of 2024

8. Per Contra, learned counsel for the respondent/defendant submits that before the Trial Court, he produced sufficient documents to prove his counter claim. But, the plaintiff had not subjected himself for further cross-examination and remained ex-parte and with a *mala-fide* intention, he evaded the proceedings. To prove the same, the learned counsel has produced the e-courts status of the Trial Court proceedings.

9. On a perusal, it reveals that before the Trial Court, on 31.07.2017, the defendant's counsel was present. Earlier, PW1 was cross examined partly. Thereafter the matter was adjourned. But, the plaintiff absented himself for further cross-examination on 31.07.2017 and allowed the suit to be dismissed for default. Thereafter, the defendant filed the counter claim and marked the documents - Exs.B1 to B37 through DW1. Subsequently the evidence was closed, by relying on the e-courts status.

10. The learned counsel for the defendant/respondent herein submits that the plaintiff absented himself before the Trial Court. Now, he has no



SA.No.330 of 2024

right to challenge the order passed by the First Appellate Court, because sufficient opportunity was given to him before the Trial Court. When the case was posted for further cross of PW1, there was no co-operation on the side of the plaintiff and the facts would show that PW1 had not co-operated. However, he challenged the judgment passed by the Trial Court before the First Appellate Court though he had not subjected himself for further cross-examination before the Trial Court, in spite of the opportunity given by the Trial Court. So the conduct of the plaintiff is to evade the proceedings. But he is now challenging the judgment of the First Appellate Court.

11. Anyway, there is a counter claim on the side of the defendant based on the title deed, which needs detailed evidence to be adduced. Therefore, this Court is inclined to set aside the judgment of the First Appellate Court in respect of the counter claim made by the defendant. Hence, the suit and the counter claim are ordered to be restored to the file of the Trial Court. Both the parties are directed to adduce evidence before the Trial Court. Liberty is also granted to adduce both oral and documentary evidence. If the plaintiff is not inclined to proceed with the suit, he is



SA.No.330 of 2024

directed to cross-examine the witness adduced in the counter claim. If any evidence is adduced by the plaintiff in the suit, the defendant is permitted to cross-examine the witnesses in the suit. Furthermore, the defendant is also directed to adduce evidence in the counter claim and the plaintiff is directed to cross-examine those witnesses even if he is not inclined to adduce evidence in the suit. Both the parties are directed to appear before the Trial Court on 24.06.2024 and from that date within eight weeks, the Trial Court is directed to record the evidence and dispose the suit by posting the case on a day-to-day basis.

12. With this direction both the suit and counter claim are remanded back before the Trial Court. This second appeal stands disposed of. There shall be no order as to costs. Consequently the connected CMP is closed.

11.06.2024

Index : Yes/No
Neutral Citation Case : Yes/No
To
1. The Subordinate Court, Alandur.
2. The Additional District Munsif Court, Alandur.
nst



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SA.No.330 of 2024

T.V.THAMILSELVI, J.

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SA.No.330 of 2024
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11.06.2024