



C.S.No.292 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.03.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.292 of 2018

S.A.Shaik Usman

... Plaintiff

Versus

S.A.Zahir Hussain

... Defendant

Prayer : Complaint filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure, to pass a judgment and decree to :

- a) directing the defendant to pay a sum of Rs.1,47,00,000/- (Rupees one crore forty seven lakhs only) towards refund of sale consideration and registration expenses along with interest at the rate of 12% per annum from the date of execution of sale deed dated 04.06.2015 registered as Doc.No.774/2015 on the file of Sub-Registrar Office, Triplicance, till the date of realisation;



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- b) to pay a sum of Rs.50,00,000/- (Rupees fifty lakhs only) towards damages along with interest at the rate of 12% per annum from the date of this plaint till the date of realisation;
- c) for the costs of the suit.

For Plaintiff : Mr.R.Rajarajan
For Defendant : Mr.Abhinav Parthasarathy
for M/s.G.R.Associates

JUDGMENT

This Civil Suit has been laid for

a. directing the defendant to pay a sum of Rs.1,47,00,000/- (Rupees one crore forty seven lakhs only) towards refund of sale consideration and registration expenses along with interest at the rate of 12% per annum from the date of execution of sale deed dated 04.06.2015 registered as Doc.No.774/2015 on the file of Sub-Registrar Office, Triplicance, till the date of realisation;

b. payment of a sum of Rs.50,00,000/- (Rupees fifty lakhs only) towards damages along with interest at the rate of 12% per annum from the date of this plaint till the date of realisation;

c. the costs of the suit.



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2.The brief facts of the case are as under :

2.1. The case of the plaintiff is that the defendant has agreed to sell the property situated in Triplicane for a total consideration of Rs.1,47,00,0000/- and it is represented to the plaintiff that the property is free from encumbrance. A sum of Rs.5 lakhs was received by the defendant on 20.12.2019. Thereafter, when the defendant insisted to pay the remaining balance sale consideration, the plaintiff came from Dubai, at that time, he came to know that there was already a suit in O.S.No.629 of 2008 as against which the second appeal is pending between one Somasundaram and the defendant herein. However, the defendant has persuaded the plaintiff to the effect that suit will be disposed on the basis of compromise entered between the Somasundaram and the defendant. Only on that promise, the plaintiff got registered the property for a total sale consideration of Rs.1 crore. The said sum is also paid to the defendant. The defendant has agreed to indemnify the said amount, if the dispute is not settled between himself and the Somasundaram in O.S.No.629 of 2008. Besides, the sale deed, indemnity bond is also executed by the defendant on 04.06.2015. However, there was



no compromise reached between the defendant and the Somasundaram. On the other hand, the suit filed by Somasundaram got decreed against the defendant which resulted in filing execution proceedings for vacating the defendant and also the plaintiff. Hence, the suit has been filed for recovery of money paid on the sale deed to the defendant.

3. On the above pleadings, following issues have been framed for trial:

“ 1. Whether the title conveyed under the sale deed dated 04.06.2015 bearing document No.774/2015 by the defendant to the plaintiff is defective or not?

2. Is not the defendant liable to reimburse the sale consideration of Rs.1 crore along with the interest for transferring defective title as per the stipulation contained in the sale deed bearing document No.774/2015 and the indemnify bond executed by the defendant in favour of the plaintiff on 04.06.2015?

3. Whether the plaintiff is entitled to the damages of Rs.50,00,000/- (Rupees Fifty Lakhs only) along with the interest per annum to the plaintiff?

4. Whether the suit is premature in nature?

5. Whether the indemnify bond dated 04.06.2015 amounts to contingent contract?”



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4. Issue No.4 is deleted, since the SLP filed by the defendant is already dismissed by the Hon'ble Supreme Court in SLP.No.9878/2017 vide judgment dated 13.04.2017. Hence, this issue will not arise at all.

5. On the side of the plaintiff, the plaintiff himself was examined as P.W.1 and marked Exs.P1 to P17. On the side of the defendant, the defendant himself was examined as D.W.1 and marked Ex.D1.

6. It is the contention of the learned counsel for the plaintiff that he was a bonafide purchaser of the property during the pendency of the suit in O.S.No.629 of 2008. Whereas, it is the contention of the learned counsel for the defendant that the said Somasundaram did not keep up his promise to settle the issue, however, he prosecuted the suit in O.S.No.629 of 2008. Excepting the promise, the property has been sold to the plaintiff and the defendant has received the sale consideration. Now, the defendant is taking steps to file review petition before this Court as against the decree and judgment in S.A.No.1168 of 2015.



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7. I have perused the materials placed on record.

Issues Nos. 1 to 5

8. The plaintiff has clearly pleaded that the property has been sold during the pendency of the suit filed by one Somasundaram. Though the plaintiff had purchased the property during the pendency of the suit, it is the specific case of the plaintiff that the defendant has promised that there was a compromise talk between himself and the Somasundaram. Therefore, the plaintiff, believing the words has entered such transactions and paid such huge amount.

9. The sale of the property during the pendency of the earlier proceedings namely S.A.No.1168 of 2014 is not disputed by the defendant. Even in his pleading, it is the categorical stand of the defendant to the effect that since the Somasundaram did not keep up his promise and prosecuted the suit in O.S.No.629 of 2008, the defendant has to face such problem. The very pleadings of the defendant makes it clear that he has sold the property



during the pendency of the suit between himself and the Somasundaram.

The suit filed against the defendant is also went against the defendant, the execution proceedings already filed, not only the against the defendant, but also plaintiff. Plaintiff also vacated from the suit property. The challenge to the decree and judgment in O.S.No.629 of 2008 made by the defendant herein also went in vain. The decree and judgment in favour of the Somasundaram is confirmed not only in appeal namely A.S.No.28 of 2014, but also in S.A.No.1168 of 2014. This judgment and decree were filed as Exs.P5, P6 and P13. The SLP filed is also dismissed, which is marked as D1. This fact also clearly indicate that the defendant having no title to the property has dealt the property during the pendency of the suit and received an huge amount of Rs.1 Crore.

10. The very sale deed executed in favour of the plaintiff namely Ex.P9 makes it clear that the defendant agreed to indemnify the purchaser namely the plaintiff, in the event, the title becomes defective one. The very Indemnity Clause No.5 in the sale deed makes it very clear he has agreed to indemnify against all the claims in respect of the property. When he has



agreed to convey the absolute title and documents and when such transaction turned to be defective title, as per the indemnity clause agreed upon by the parties, the defendant is certainly liable to return the sale amount with all other necessary expenses met out by the plaintiff in this regard. Apart from the sale deed containing the Indemnity Clause, the defendant has also executed another Indemnity Bond on the same day which is also marked as Ex.P10.

11. Considering these aspects, particularly, when the defendant has indemnified and agreed to indemnify against all claims and received such huge amount and made the plaintiff to part with such huge amount for the property in respect of which the defendant has no proper title, the defendant is certainly liable to pay the amount to the plaintiff.

12. Considering the amount paid towards the sale consideration and also registration fees, the plaintiff is certainly entitled for recovery of amount of Rs.1,47,00,000/- with subsequent interest @ 6 p.a from the date of suit till the date of realisation. As far as the damage is concerned, though



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it is stated by the plaintiff that he has suffered damages, the fact remains that with regard to the nature of damages suffered by the plaintiff, absolutely there is no materials. That apart, it is relevant to note that it is not the case, as if the plaintiff was totally lured or induced to purchase the property, in fact, he was also aware of the pendency of the proceedings and taken a risk in paying such huge amount that too when the suit is already pending. Therefore, he cannot be considered as a purchaser in good faith. The doctrine of caveat emptor is applicable to the plaintiff. Such view of the matter, when a person knowingly takes risk and parting money cannot claim damages on account of such defective title. Accordingly, these issues are answered.

13. In the result, the suit is partly decreed, with costs, for a sum of Rs.1,47,00,000/- with interest @ 6 p.a. from the date of suit till the date of realisations.

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List of Witness examined on the side of the Plaintiff:



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P.W.1

Mr.K.A.Ashraf Ali

List of Exhibits marked on the side of the Plaintiff:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	Ex.P1	Original General Power of Attorney	22.03.2018
2	Ex.P2	Original Sale Deed bearing Doc.No.989/2010	31.08.2010
3	Ex.P3	Original Rectification Deed bearing Doc.No.1235/2010	02.11.2010
4	Ex.P4	Building Plan Approval	04.04.2012
5	Ex.P5	Certified Copy of the judgment passed in O.S.No.629/2008 on the file of VI Assistant City Civil Court	04.06.2013
6	Ex.P6	Certified Copy of the judgment passed in A.S.No.28/2014 on the file of VI Additional City Civil Court	12.09.2014
7	Ex.P7	Original property tax receipt in favour of the defendant	26.02.2015
8	Ex.P8	Original E.B. Card	-
9	Ex.P9	Original Sale Deed in favour of the plaintiff	04.06.2015
10	Ex.P10	Original Indemnity Bond	04.06.2015
11	Ex.P11	Original Patta stands in the name of the defendant.	-
12	Ex.P12	Original Patta stands in the name of the plaintiff.	-
13	Ex.P13	Original E.B. Card stands in the name of the plaintiff.	-
14	Ex.P14	Certified cop of judgment in	-



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<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
		S.A.No.1168/2014 by Hon'ble High Court of Madras	
15	Ex.P15	Certified copy of the sale deed executed by Learned XI Additional City Civil Court Judge in favour of Somasundaram	01.08.2018
16	Ex.P16	Certified copy of the counter filed by the defendant in E.P.No.4739 of 2013 on the file of IX Assistant City Civil Court	20.09.2019
17	Ex.P17	Certified copy of the petition and orders passed by IX Assistant City Civil Court, Chennai in E.P.No.4739/2013	10.02.2021

List of Witness examined on the side of the Defendant :

D.W.1 Mr.S.A.Zahir Hussain

List of Exhibit marked on the side of the Defendant:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	Ex.D1	Ex.D1 is the web copy of order of Hon'ble Supreme Court of India in SLP.No.9878/2017.	13.04.2017

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Internet : Yes



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Index : Yes / No
Speaking order / Non Speaking order

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N. SATHISH KUMAR, J.

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To

The Sub-Assistant Registrar,
Original Side,
High Court, Madras.

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