



A.S.No.281 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 12.11.2024	Delivered on 11.12.2024
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CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

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M.A.Panchatcharam

...Appellant

Vs.

V.Shanthi

...Respondent

Prayer: Appeal filed under Section 96 of the Code of Civil Procedure, praying to set aside the judgment and decree dated 27.11.2020 passed by the XIX Additional Judge, City Civil Court, Chennai in O.S.No.6262 of 2019 and dismiss the suit with exemplary cost.

For Appellant	:	Mr.M.A.Panchatcharam, Party-in-Person
For Respondent	:	Mrs.D.Selvakumari



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J U D G M E N T

WEB COPY (Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

The defendant in the suit for recovery of damages is on appeal, aggrieved by the decree of the trial Court directing him to pay a sum of Rs.13,91,207/- as damages with interest at 12% per annum from the date of filing of the suit till date of decree and thereafter at 6% per annum till the date of realization.

2. For the purpose of convenience, the parties will be referred to as per their rank in the trial Court.

3. The plaintiff sued for damages contending that she had entered into a joint development agreement with the defendant on 26.09.2007. As per the agreement, out of the total extent of 6600 sq.ft. of land belonging to the plaintiff, an extent of 1204.63 sq.ft. shown as Block A in the sanctioned plan was retained for the exclusive use of the plaintiff and the same was not subject matter of the joint venture agreement.



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4. As per the terms of the joint venture agreement, the defendant agreed to construct Block B, C and D as per the approved plan and the plaintiff would get 60% of the constructed area, while the defendant would take 40% of the constructed area as his disposable quota. It was claimed that the defendant did not complete the construction in full and he had entered into an agreement with three purchasers for sale of his 40% share and sale deeds were executed by the plaintiff in favour of the purchasers on 28.07.2008, 29.12.2008 and 09.07.2009.

5. After execution of the sale deeds, the defendant had chosen to complete the work only for his purchasers and when 85% of the work was completed, the plaintiff came to know that the construction was in excess of the ratio fixed in the joint venture agreement. The excess area was found to be measuring 606 sq.ft. It is the plaintiff's claim that the defendant having received the entire consideration from the purchasers stopped the construction work.



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6. It was also contended that the defendant who had committed breach of contract had filed a civil suit in O.S.No.7843 of 2010 for recovery of Rs.13,90,681/- as against the plaintiff, claiming it to be the cost of construction in the area marked as 'A', which was retained by the plaintiff. The suit was dismissed on 03.09.2011 and on appeal, this Court modified the decree directing the plaintiff to pay a sum of Rs.2,69,452/-. During the hearing of the appeal, the defendant had accepted that he had sold excess portion.

7. The defendant's son also filed a suit against the plaintiff and the said suit was subsequently withdrawn. Another suit was filed by him in C.S.No.650 of 2012 for damages and the same also came to be withdrawn subsequently.

8. The plaintiff would submit that she was forced to complete the remaining 15% work by engaging another Engineer and the cost of construction worked out to Rs.16,00,000/- and the defendant alone is liable



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to repay the sum of Rs.16,00,000/-. However, the plaintiff restricted her claim for additional construction cost at Rs.8,19,207/-.

9. She also claimed rent for the period from September 2009 to March 2014, which worked out to Rs.9,72,000/-. The plaintiff would also claim a sum of Rs.15,00,000/- towards cost of litigation and damages. Thus, the total claim of the plaintiff was to the tune of Rs.32,91,207/- and the plaintiff restricted it to Rs.30,00,000/-.

10. The defendant resisted the suit contending that the entire interior work was completed and what remained to be done was only the work in the common area and the defendant could not do the work because of the hostile attitude of the plaintiff. It was also contended that the purchasers moved the District Consumer Disputes Redressal Forum in C.C.No.162 of 2012, claiming deficiency in service.

11. While admitting the issuance of cheque for Rs.10,00,000/- in favour of the plaintiff and the stop payment instruction issued, the defendant



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would contend that the defendant had constructed three shops in the ground floor and one flat in first floor for the plaintiff in the portion marked as 'A', which did not form part of the joint venture agreement. Since the plaintiff and her husband refused to pay him for the cost of the said construction he had issued stop payment instruction. He would also submit that this Rs.10,00,000/- was adjusted when decree was passed by this Court in A.S.No.175 of 2012.

12. It is the contention of the defendant that the entire work was completed and only when the weathering course and certain works in the common area like plastering work were pending is when the dispute arose. They could not be completed because of the high-handed action of the plaintiff and her husband. It is also stated that the plaintiff has not paid for commercial construction that was made and therefore the total value of the work which was yet to be completed was only for about Rs.6,47,830/- as per the Surveyor's report. On the above pleadings, the defendant sought for dismissal of the suit.



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13. On the above pleadings, the learned trial Judge framed the following issues.

i) Whether the plaintiff has suffered a monetary loss or any loss on account of the conduct of the defendant?

ii) Whether the plaintiff is entitled to get Rs.30 lakhs as damages with interest at 12% p.a. from the date of plaint till the date of realization?

iii) Whether the defendant is liable to pay the cost?

iv) To what other relief the plaintiff is entitled to?

14. At trial, the plaintiff was examined as PW1 and Exs.P1 to P19 were marked. The defendant was examined as DW1 and Exs.D1 to D17 were marked.

15. The learned trial Judge upon consideration of the evidence concluded that the plaintiff has not completed the construction to the extent



of 15% of the area. Taking into account the total area of the construction proposed i.e., 6483 sq.f., the learned trial Judge worked out the 15% at 972.45 sq.ft. Taking the cost of construction at Rs.1994/- per sq.ft., the learned trial Judge concluded that the cost of the construction that was left unfinished would be Rs.19,39,065.30/-. Since the plaintiff had claimed only Rs.8,19,207/- towards the cost of construction, the learned trial Judge concluded that she would be entitled to the entire amount claimed.

16. As regards the arrears of rent which was claimed at Rs.9,72,000/-, the learned trial Judge found that the plaintiff had occupied the flat from January 2010 itself and therefore she would be entitled to rent only for a period of four months between September 2009 and December 2009, which would work out to Rs.72,000/-. The learned trial Judge also awarded damages for launching unnecessary litigation at Rs.5,00,000/-. In all the learned trial Judge awarded a sum of Rs.13,91,207/-. Aggrieved by the said decree, the defendant has come up with this appeal.



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17. We have heard Mr.M.A.Panchatcharam/ defendant/ appellant who had appeared in person and Mrs.D.Selvakumari, learned counsel appearing for the sole respondent/plaintiff.

18. Mr.M.A.Panchatcharam, the appellant appearing in person, would contend that the Court was not right in awarding cost of construction of 15% of the total constructed area. He would point out that what was left unfinished was only 15% of the work in the common area and not 15% of the total constructed area. In support of his submission, the appellant would draw our attention to Ex.P11, which is the bill submitted by the Engineer who was engaged for the purpose of completing the work. Drawing support from Ex.P11, Mr.M.A.Panchatcharam would contend that what was left incomplete for blocks B and C was only work worth Rs.3,94,600/- plus a sum of Rs.92,640/- incurred towards laying the weathering course. Therefore, according to the appellant, the claim of the plaintiff that 15% of the entire area was not built up was not correct. Drawing our attention to Ex.P11 Mr.Panchatcharam would submit that there is no other evidence except the



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said document to show that the plaintiff had incurred expenditure in completing the construction work.

19. Reliance was also placed on the judgment of this Court in A.S.No.175 of 2012, which was marked as Ex.P10, wherein, the Court has recorded a finding that only 15% of the work in the common area remained incomplete. While granting a decree for a sum of Rs.2,69,452/- in A.S.No.175 of 2012, this Court had actually found that the defendant/appellant herein was liable to pay a sum of Rs.12,60,370/- to the defendant therein/ plaintiff herein and after deducting Rs.9,90,918/- towards the value of the excess land sold, a decree was granted for remaining amount of Rs.2,69,452/-.

20. Reliance is also placed on Ex.D2 dated 10.10.2009, which is an estimate filed by the Engineer engaged by the plaintiff for completion of the work. It is pointed out that the total cost of the work for the flats that remained to be complete as on 10.10.2009 was only a sum of Rs.4,68,500/- including the cost of weathering course. The actual work done is evidenced



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by Ex.P11 dated 10.12.2013 and the cost of the work done for the flats worked out to Rs.3,94,600/-. This does not include the weathering course.

Hence, according to the defendant/ appellant the total cost incurred for completing the works that were left unfinished was only Rs.4,87,240/-.

Therefore, according to the defendant, the trial Court was wrong in assuming that the plaintiff had not completed 15% of the entire work and awarding a sum of Rs.8,19,207/- towards cost of completion of the construction.

21. On the question of damages for delay in delivery / rental income the defendant would submit that the trial Court was justified in awarding a sum of Rs.72,000/- only.

22. As regards the cost of litigation, the defendant would submit that he was not responsible for the purchasers having approached the consumer forum and finally their complaint was dismissed. He would also add that the plaintiff is still in possession of the flat that was purchased by the son of the defendant and proceedings are pending between the son of the defendant



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and the plaintiff. Therefore, according to him, the trial Court ought not to have granted damages at Rs.5,00,000/- on the ground that the litigations were launched by him.

23. Contending contra, Mrs.D.Selvakumari, learned counsel appearing for the respondent/ plaintiff would submit that it is an admitted case that 15% of the total work was not completed. Therefore, the trial Court's conclusion and grant of Rs.8,19,207/- towards unfinished work is justified. She would also further point out that Ex.D2 is only an estimate and therefore the same cannot provide the basis for the contention of the defendant that only 15% of the work in the common area was alone unfinished. As regards the rejection of the claim for damages for the period upto 2014 the plaintiff has not chosen to file any cross-appeal. Therefore, the learned counsel is prevented from arguing for enhancement of the damages for use and occupation. As far as the cost of litigation that has been awarded, the learned counsel would contend that the defendant's son has been initiating suit after suit against the plaintiff and others and some of the suits have been withdrawn. It is also claimed that certain proceedings



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are still pending and therefore for the mental agony and cost of litigation, the trial Court was right in awarding a sum of Rs.5,00,000/-.

24. We have considered the rival submissions.

25. On the contention of the learned counsel for the parties, the following points emerge for determination in this appeal:

1) Whether the trial Court was right in granting a decree for a sum of Rs.8,19,207/- towards cost of completion of the unfinished work?

2) Whether the trial Court was right in granting a sum of Rs.5,00,000/- as damages towards litigation costs?

Point No.1:-

26. It has been the consistent case of the defendant that only 15% of the work in the common area remained unfinished when he was forced to exit from the construction. He had put forward the very same plea even in the earlier proceedings filed by him in O.S.No.7843 of 2010 with reference



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to cost of construction in the property in Block A, which did not form part of the joint venture agreement dated 26.09.2007. It is the consistent case of the plaintiff that 15% of the entire work remained unfinished and she had to engage a different person to complete the work.

27. The evidence that has been placed in support of the said contention is Ex.P11 and Ex.D2. Ex.P11 is the actual bill submitted by the Engineer. It contains the cost of construction in A Block as well as in Blocks B and C. The construction in the A Block is not subject matter of the suit. It is only the construction in Blocks B and C, which is the subject matter of the suit. From the work that has been shown to be done, we find that all that work was in the common area and the total value of the work done was Rs.3,94,600/-. This of course, does not include the cost of weathering course. The cost of the weathering course can be culled out from Ex.D2, which is an estimate given by the Engineer, which shows that estimated cost of weathering course is Rs.92,640/-. The defendant as DW1 has admitted that he has not completed the weathering course. Therefore, he would be liable to pay the cost of the weathering course also.



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28. On the evidence that is available the actual cost of construction incurred by the plaintiff to complete the unfinished work was only Rs.3,94,600/- for flooring, painting and other electrical work as per Ex.P11 and Rs.92,640/- towards laying weathering course as per Ex.D2. Thus, the total works out to Rs.4,87,240/-.

29. Therefore, the trial Court was not right in going on an assumption that 15% of the entire work remained unfinished and therefore the plaintiff would be entitled to cost of construction of 15% of the unfinished work that is about 972.45 sq.ft. Hence, Point No.1 is answered partly in favour of the appellant.

Point No.2:-

30. This relates to award of damages for legal proceedings initiated by the defendant's son. Of course, the plaintiff has been forced to face litigations. As far as the suit in O.S.No.7843 of 2010 is concerned, in the



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appeal against the said decree this Court has concluded that the defendant would be entitled to a decree for a sum of Rs.12,60,370/- towards the cost of construction put up by him and after deducting a sum of Rs.9,90,918/- the cost of excess land sold by the defendant, a decree was passed for Rs.2,69,452/-. Therefore, the said litigation cannot be said to be a frivolous litigation.

31. As far as the C.C.No.162 of 2012 is concerned, the defendant was not responsible for the said litigation. However, the said complaint has been dismissed by the Commission. Therefore, the defendant cannot be held solely responsible for the litigation. Of course, the defendant's son has filed at least three suits against the plaintiff and it is now claimed that one such suit has been withdrawn as not pressed. The other suits are stated to be pending. Therefore, mere filing of the suit and subsequent withdrawal by the son of the defendant, who is also a purchaser of the apartment cannot be termed as vexatious litigation at the instance of the defendant. However, the plaintiff has been forced to defend all these proceedings therefore she would be entitled to some compensation.



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32. We do not think the compensation fixed by the trial Court at Rs.5,00,000/- is justified. We therefore award a compensation of Rs.1,00,000/- towards litigation expenses and damages for the plaintiff having been forced to face litigations. This point is answered partially in favour of the appellant.

33. In view of the answers to both points raised in the appeal, the plaintiff would be entitled to a decree for a sum of Rs.4,87,240/- towards the cost of additional construction, Rs.72,000/- towards loss of rent for the period of four months between September 2009 and December 2009 and a sum of Rs.1,00,000/- towards damages for being forced to defend the litigations.

34. Therefore, the appeal is **partly allowed** as indicated above. The judgment and decree of the trial Court are modified granting a sum of Rs.6,59,240/- as damages to the plaintiff with interest at 9% per annum



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from the date of suit till date of decree and at 6% per annum thereafter till date of payment. The parties will bear their own costs in this appeal.

(R.SUBRAMANIAN, J.)

(C.KUMARAPPAN, J.)

11.12.2024

dsa

Index : No

Internet : Yes

Neutral Citation : No

Speaking order



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To

The XIX Additional Judge,
City Civil Court, Chennai.



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R.SUBRAMANIAN, J.
and
C.KUMARAPPAN, J.

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