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O.S.A.Nos.194 to 198 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

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THE HON'BLE Mr. JUSTICE S.S.SUNDAR
AND
THE HON'BLE Dr. JUSTICE A.D.MARIA CLETE

O.S.A.Nos.194, 195, 196, 197 & 198 of 2024
AND
C.M.P.No.23170 of 2024

V.T.C.Selvaraj

.. Appellants in all OSAs

Vs.

1.Hameetha Amir
2.Tahira Amir
3.Zaheeda Parveen
4.Noor-UI-Nissa
5.Amir Jamal

.. Respondents in all OSAs

Original Side Appeals filed under Order XXXVI Rule 9 of O.S. Rules read with Clause 15 of Letters Patent, against the common order dated 28.06.2024 passed in A.Nos.2839 to 2843 of 2024 in C.S.No.757 of 2016.

For Appellant : Mr.V.Srikanth
in all OSAs

For Respondents : Mr.Jayesh B Dolia
in all OSAs Senior Counsel

COMMON JUDGMENT



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(Delivered by S.S.SUNDAR, J.)

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These appeals are directed against the common order dated 28.06.2024 passed by the learned Single Judge in A.Nos.2839 to 2843 of 2024 in C.S.No.757 of 2016, dismissing the applications filed by the plaintiff to reopen and recall the plaintiff's witness as well as defendants' witness and to mark documents.

2. The appellant filed C.S.No.757 of 2016 to declare the sale deed dated 31.03.2006 in document No.324/2006 as sham, nominal, null and void and vitiated by fraud. It is seen that after the evidence of both the plaintiff and defendants side is over, the plaintiff filed A.No.2839 of 2024 to reopen the plaintiff's side evidence, A.No.2840 of 2024 to recall the P.W.1., A.No.2841 of 2024 to reopen the defendants' side evidence, A.No.2842 of 2024 to recall the D.W.1. and A.No.2843 of 2024 to condone the delay in filing the documents. In the common affidavit filed by the plaintiff, it is stated that the plaintiff had failed to inform his counsel that the consideration alleged to have been received by the plaintiff is not reflected in his bank accounts. In the plaint, the plaintiff admitted receipt of a sum of Rs.90 lakhs, but disputed the receipt of a cheque for a sum of Rs.33,46,630/- as acknowledged under the sale deed. The plaintiff produced copy of bank statements of his three different accounts and the



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purpose of these applications are to mark the bank statements and to recall D.W.1 for further examination. All these applications were seriously contested by the defendants as the attempt was to prove that the money that was paid as consideration had not been credited in the three bank accounts mentioned in the application.

3. The learned Single Judge, having regard to the pleadings and facts admitted, failed to see any *bona fides* in the applications which were filed after the closure of evidence of both sides. It is pointed out by the learned Single Judge that it was not necessary to the plaintiff to deposit the consideration by way of cheque and should have deposited the said amount only in the said three bank accounts, the statements of which are now sought to be marked by him. Considering the fact that the applications to reopen and recall both the plaintiff's and defendants' witnesses and to mark bank statements are filed belatedly and allowing the same would cause prejudice to the parties, the learned Judge dismissed these applications.

4. As against the order of dismissal, the present original side appeals have been filed by the plaintiff mainly on the ground that the documents which are sought to be marked are very much relevant to prove the case of the plaintiff



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and that the plaintiff has been cheated and the sale deed has been obtained by a sham and nominal document, without paying consideration.

5. This Court carefully considered the submissions of the learned counsel for the appellant/plaintiff as well as the points raised by the appellant in the memorandum of grounds.

6. The suit filed by the plaintiff is on the specific allegation that the defendants have not given the cheque to the plaintiff which is for a sum of Rs.33,46,630/-, referred to in the sale deed that was executed in 2006. Even though it is stated that the sale is vitiated by fraud on the ground that there was failure of part of consideration, the plaintiff admitted that the document was executed in order to secure the payment that was paid by the defendants as a loan. It is also admitted before this Court that the rental income is being collected by the defendants. The explanation offered by the learned counsel for the appellant/plaintiff is that the rent was permitted to be collected by the defendants, in lieu of interest.

7. The appellant/plaintiff has filed the civil suit nearly ten years after the



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document was executed. The suit is pending for more than eight years. The applications have been filed by the appellant/plaintiff after the closure of evidence and the matter is posted for arguments. Therefore, the learned Single Judge is right in holding that the applications are belated and unnecessary, especially, when the appellant/plaintiff tries to prove his case by producing three bank account statements that the consideration as shown in the document was not received by him. Even though the plaintiff could have taken steps to call for the records from the banks by tracing the cheques that were referred to in the document, no such attempt was taken by the plaintiff at the relevant time. Without assigning reasons, the plaintiff seeks reopening to recall D.W.1. The facts admitted and circumstances show that the applications lack *bona fides*. Therefore, this Court is unable to find reasons to interfere with the order of the learned Single Judge dismissing all the applications for want of merits and accordingly, these original side appeals are dismissed. No costs. Connected C.M.P. is closed.

[S.S.S.R.,J.] [A.D.M.C.,J.]
21.10.2024

Index : Yes/No
Neutral Citation : Yes/No
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