IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

FRIDAY, THE TWENTY THIRD DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

CITY CIVIL COURT APPEAL NO: 118 OF 2019

Appeal under section 96 R/w Order 41 Rule 1 of C.P.C against the Judgment and Decree Dated 11.12.2018 made in O.S.No.226 of 2013 on the file of the Court of the Chief Judge, City Civil Court at Hyderabad.

Between:

1. Ashok Kumar Jain, S/o Babulal Jain, Aged about 57 years, Occ- Business R/o 15-1-503/B/20, Ashok Market, Siddiambar Bazar, Hyderabad
2. Alka Jain, W/o Ashok Kumar Jain, aged about 48 years, occ-Housewife R/o 15-1-503/B/20, Ashok Market, Siddiambar Bazar, Hyderabad
3. Avinash Kumar Jain, S/o Ashok Kumar Jain aged about 29 years, Occ-Business R/o 15-1-503/B/20, Ashok Market, Siddiambar Bazar, Hyderabad
4. Ankit Jain, S/o Ashok Kumar Jain aged about 25 years, Occ- Business R/o 15-1-503/B/20, Ashok Market, Siddiambar Bazar, Hyderabad
5. Bharat Jain, S/o Ashok Kumar Jain aged about 29 years, Occ- Business R/o 15-1-503/B/20, Ashok Market, Siddiambar Bazar, Hyderabad

... Petitioners/Appellant

AND

M. Vidyanath Reddy, S/o Sri M Ramana Reddy, Aged 50 years, Occ-Business, R/o 3-6- 439/A Street no. 5, Ground Floor, Himayatnagar, Hyderabad

...Respondents/Respondents

Counsel for the Appellants : Sri Sunil B Ganu

Counsel for the Respondent: Sri Raghu Gurram

The Court delivered the following: Judgment

THE HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU

CITY CIVIL COURT APPEAL NO.118 OF 2019

JUDGMENT:

Feeling aggrieved by the Judgment and Decree, dated 11.12.2018 in O.S.No.226 of 2013 on the file of Chief Judge, City Civil Court, Hyderabad whereunder their suit for recovery of money i.e., Rs.21,72,980/-, being the cost of difference of land to an extent of 45.12 sq.yards, stamp duty etc., was dismissed, the plaintiff in the said suit have filed this first appeal under Section 96 r/w Order 41 Rule 1 Code of Civil Procedure (*for short 'CPC'*) with a prayer to set aside the impugned judgment and decree and pass a decree in their favour.

2. The appellants have filed O.S.No.226 of 2013 before the trial Court for recovery of money. As could be seen from the plaint averments, it appears that the appellants have purchased land from the respondent, but later they have realized that there was deficit in the extent of land. They have claimed that the respondent offered an extent of 570 sq.yards for sale, and after due negotiations

they agreed to purchase the property for Rs.2,28,00,000/- and having transferred the said amount by way of RTGS, they could obtain sale deed from the respondent/defendant. But, when they got measured the land, they found the total extent available was only 524.88 sq. yards. Therefore, they sought for recovery of Rs.21,72,980/- being cost of the deficit land, stamp duty and interest on the amount paid by them.

3. The respondent/defendant has admitted the sale of land in favour of the appellants has specifically contended that he has got the property by way of gift deed from one M. Chitra Devi who has purchased the same under a registered sale deed from one B. Madhan Mohan. He did not dispute the claim of appellants that he offered an extent of 570 sq.yards, but however claimed that he offered the land which he could obtain by way of gift and he never agreed to sell the land on square yard basis, and the price was fixed as lump sum. He has also claimed that since he sold the property in lump sum for fixed

consideration, he need not pay any amount to the appellants and sought for dismissal of the suit.

4. The trial Court framed the following four (4) issues for trial:

1. Whether the defendant sold the suit schedule property in lump sum for Rs.2,28,00,000/- as claimed by the defendant?
2. Whether the suit schedule property admeasuring 570 sq.yards as mentioned in the sale deed 08.08.2012 bearing documents N.3394 of 2012 or it is 524.88 sq.yards as claimed by the plaintiffs?
3. Whether the plaintiffs are entitled for the suit claim?
4. To what relief?

5. In order to prove their respective contentions, both plaintiffs and defendant have adduced evidence. The 1st plaintiff was examined as PW1 and he has marked Exs. A1 to A6. The respondent/defendant was examined as DW1, but he did not mark any documents. The trial Court having appreciated the pleadings of both parties and evidence, came to the conclusion that the plaintiffs are supposed to verify and got the land measured before they enter into the transaction and as they purchased the

property in lump sum, they could not prove their claim for recovery of money and dismissed the suit.

6. Being aggrieved by the said judgment, the appellants have filed this appeal on the ground that the trial Court failed to take into consideration the fact that respondent did not deny the total extent as 570 sq.yards, but simply relied on the fact that the boundaries to the property was mentioned in the document. But, the trial Court failed to consider that the appellants have purchased an extent of 570 sq.yards as mentioned in the link document. Therefore, the respondents could not have claimed that he need not pay any amount and they have also claimed that trial Court ought to have taken into consideration the fact that as per clause 4 of Ex.A1-sale deed, respondent undertaken to indemnify the appellants to the extent of loss caused to them due to any defect found in the title of the suit schedule property. But, the trial Court simply brushed aside the said covenant by erroneously observing that the appellants should have got the properties measured before purchasing the said

property. They have also claimed that trial Court committed an error by holding that the appellants failed to prove their case as they did not examine the Advocate Commissioner or Surveyor appointed to measure the property and that the report as filed cannot believe to be true. They have also claimed that the respondent did not raise any objection to the report filed by the Advocate-Commissioner, therefore they cannot raise any objection for considering the said report for deciding the suit claim.

7. The appellants have also contended that the trial Court committed an error by observing that the appellants ought to have measured the land before execution of the sale deed in as much as, as per usual procedure the title and details of the property are verified by any purchaser only as per the link documents provided to them. The appellants have ensured that they undergo their due diligence before obtaining the sale deed. No purchaser as a matter of practice can be expected to measure the property that is being purchased if all the

documents in respect of the same mentioned the identical extents.

8. In view of the pleadings of both parties and evidence adduced before the trial Court, and in view of the above referred grounds, the following points arose for consideration in this first appeal:

1. Whether the trial court justified in holding that the appellants' failure to have the land measured before obtaining the sale deed disqualifies them from claiming recovery of money?
2. Whether the report of the Advocate Commissioner which clearly indicates the total extent of the property as 527 sq.yards, can be considered for allowing the claim of appellants?
3. Whether the appellants cannot rely on the Commissioner's report simply because they failed to examine the Advocate Commissioner as a witness on their behalf?
4. Whether the Judgment and Decree of the trial Court are legally sustainable?

9. As per the admitted case of both parties, the respondent offered the property which he has obtained under a registered gift deed from one Chitra Devi, who has purchased the property under a registered sale deed. There is no dispute about the total price fixed for purchasing the

property. The respondent nowhere denied the contentions of the appellants that the total extent mentioned in the above referred sale deed and gift deed, shows the total extent as 570 sq.yards. It is an admitted fact that the appellants did not measure the property before obtaining the sale deed.

10. As could be seen from the record apart from oral and documentary evidence vide Exs.A1 to A6, the appellants have also relied on the report of an Advocate Commissioner who was appointed at their instance and who could measure the property with the help of a Surveyor. The respondent did not deny the appointment of a Commissioner to measure the property and execution of the warrant by Advocate Commissioner with the help of a Surveyor. Ex.A1 is the sale deed through which the appellants have purchased the property for a lump sum of Rs.2,28,00,000/-. As could be seen from the recitals of the said sale deed the total extent was 570 sq. yards. It may be true that the appellants did not purchase the property on square yard basis, but as per the recitals of the sale

deed, it is quite clear that respondent offered an extent of 570 sq.yards which he could have obtained by way of registered gift. Simply because the property was not measured the respondent cannot claim that he need not pay the amount if the total extent available found to be deficit than the extent that was mentioned in the sale deed. It is not the case of respondent that he has offered the property **"as it is where it is condition".**

11. The respondent who was examined as DW1 has admitted that in all the documents the total extent was shown as 570 sq.yards. It is elicited from DW1 that there was no condition in the document to the effect that he was alienating the property in the same condition that was available on the spot. When he offered some property based on a registered gift deed wherein the total extent is shown as 570 sq.yards, he cannot claim that he need not deliver such an extent and it is enough if the property is shown with specific boundaries. The appellants may not have measured the property while obtaining the registered gift.

But, the fact remains that the extent of the property was shown as 570 sq.yards in both the link documents.

12. The trial Court made an observation that since the appellants have filed the suit for recovery of money, they are under obligation to prove their contention and as they failed to get the land measured before obtaining the registered sale deed, they cannot claim the suit amount. The trial Court also observed that the report of the Commissioner cannot be taken into consideration. It is true the Advocate Commissioner who got the land measured was not examined. However, there was no objection raised by the respondent to the report filed by the Advocate Commissioner. It is not the case of respondent that he has filed objections to the report, thereby, claimed that the Advocate Commissioner went in wrong by finding the total extent as 527 sq.yards. As per Ex.A6 plan which was enclosed to the plaint the total area is shown as 536.47 sq.yards. The evidence of PW1 and his documents clearly indicates that there was an agreement between the appellants and respondent for purchase of the total extent

that is available in the gift deed through which the respondent obtained the property. The appellants have agreed to purchase such an extent by paying Rs.2.28,00,000/-. Therefore, the respondent must deliver the total extent which he has offered through the above referred two important documents. When once he did not choose to raise any objection to the Advocate Commissioner's report which is made as part of the record, he cannot contend that the appellants failed to prove their contention. It may be true that the appellants did not examine the Commissioner as a witness on their behalf. But, when once the report is made as part of the record, such a contention is not available to the respondent.

13. The appellants have relied on a Judgment between ***Smt.Vadda Rajeswaramma vs Dr.V.L.Narsimha Charyulu***[1] wherein it was observed that when once the Commissioner's report is made as part of the record it is binding on the parties to the suit. The report referred above clearly indicates that the total extent available was not 570

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[1] MANU/AP/0938/1998

sq.yards as mentioned in the link documents of the respondent, but it is only 520 sq.yards. Therefore, the appellants are entitled to the refund of cost of the deficit extent together with the proportionate stamp duty and interest. But, the trial Court simply by making an observation that the appellants did not get the land measured, thereby they are not entitled to the suit claim and dismissed the suit without considering the report of the Commissioner which clearly indicates the deficit extent that was handed over to the appellants. Therefore, the appeal deserves to be allowed.

14. **In the result**, the appeal is allowed. The judgment and decree, dated 11.12.2018 passed by the Chief Judge, City Civil Court, Hyderabad vide O.S.No.226 of 2013 is set aside. No costs.

Pending miscellaneous applications, if any, shall stand closed.

Sd/- M. VIJAYA BHASKER
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Chief Judge, City Civil Court at Hyderabad(With records)
2. One CC to Sri Sunil B Ganu, Advocate [OPUC]
3. One CC to Sri Raghu Gurram, Advocate [OPUC]
4. Two CD Copies

ADK/gh
PMW

HIGH COURT

DATED:23/02/2024

JUDGMENT+DECREE

CCCA.No.118 of 2019

ALLOWING THE CCCA

6 DMA
21/10/24

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

FRIDAY, THE TWENTY THIRD DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

CITY CIVIL COURT APPEAL NO: 118 OF 2019

Between:

1. Ashok Kumar Jain, S/o Babulal Jain, Aged about 57 years, Occ- Business R/o 15-1-503/B/20, Ashok Market, Siddiambar Bazar, Hyderabad
2. Alka Jain, W/o Ashok Kumar Jain, aged about 48 years, occ-Housewife R/o 15-1-503/B/20, Ashok Market, Siddiambar Bazar, Hyderabad
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... **Petitioners/Appellant**

AND

M. Vidyanath Reddy, S/o Sri M Ramana Reddy, Aged 50 years, Occ-Business, R/o 3-6- 439/A Street no. 5, Ground Floor, Himayatnagar, Hyderabad

...**Respondents/Respondents**

Appeal under section 96 R/w Order 41 Rule 1 of C.P.C against the Judgment and Decree Dated 11.12.2018 made in O.S.No.226 of 2013 on the file of the Court of the Chief Judge, City Civil Court at Hyderabad.

This appeal coming on for hearing and upon perusing the grounds of appeal, the Judgment and Decree of the Lower Court and the material papers in the Suit and upon hearing the arguments of Sri Sunil B Ganu, Advocate for the Appellants and of Sri Raghu Gurram, Advocate for the Respondent.

This Court doth Order and Decree as follows:

1. That the City Civil Court Appeal be and hereby is Allowed;
2. That the Judgment and decree, dated 11-12-2018 passed by the Chief Judge, City Civil Court at Hyderabad vide O.S.No.226 of 2013 is set aside;
3. That there shall be no order as to costs in this appeal.

Sd/- M. VIJAYA BHASKER
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Chief Judge, City Civil Court at Hyderabad
2. Two CD Copies

ADK
pma

HIGH COURT

DATED:23/02/2024

DECREE

CCCA.No.118 of 2019

(4) PMG.
21/10/24.

ALLOWING THE CCCA