

A.S.No.83 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 06.03.2025

PRONOUNCED ON : 13.03.2025

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

A.S.No. 83 of 2019
and
CMP No.3357 of 2019

D. Kartish

...

Appellant

Vs.

1. Dr. R.Ezhilarasan

2. Mrs. E. Santhi

...

Respondents

Prayer: First Appeal has been filed under Section 96 of the Civil Procedure Code to set aside the judgment and decree made in O.S.No.4071 of 2012 dated 31.08.2018 on the file of the II Additional City Civil Court, Chennai and dismiss the suit.

For Appellant : Mr. K. Suresh Babu

For Respondents : Mr.N. Ishtiaq Ahmed



A.S.No.83 of 2019

JUDGMENT

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Aggrieved over the judgment and decree dated 31.08.2018 passed in O.S.No.4071 of 2012 on the file of the II Additional City Civil Court, Chennai the defendant has preferred the first appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The plaintiffs filed the suit for realization of advance sale consideration and for permanent injunction restraining the defendant from alienating the suit property till the payment of advance sale consideration with interest and for cost.

4. The respondents/plaintiffs case is as follows:

The defendant is the owner of the plaint schedule property. He entered into an agreement for sale dated 15.04.2011 with the first plaintiff and the sale consideration was fixed at Rs.1,14,00,000/- and a memorandum of undertaking was also executed between the 2nd plaintiff and the defendant. The plaintiffs have also paid a total sum of Rs.12,40,000/- as advance sale consideration to



A.S.No.83 of 2019

the defendant by way of two cheques dated 15.03.2011 for Rs.2,40,000/-drawn

on Axis Bank and another cheque dated 19.04.2011 for Rs.10,00,000/- drawn

on ICICI Bank. It is also agreed between the parties that on production of original title deeds by the defendant, the plaintiffs had to pay the balance sale consideration within one month. The time for performance of contract is fixed as three months. It was also agreed that if due to default and negligence on the part of the purchaser, in spite of readiness and willingness of the vendor, the advance amount should be refunded by deducting 10% and if the vendor failed to perform his part of contract, the advance sale consideration is refundable with interest at the rate of 24% p.a.

5. On 31.01.2012, when the plaintiffs visited the plaint schedule property, some other proposed buyers also inspected the property and on enquiry, the plaintiffs came to know that there were negotiations by the defendant to sell the property. If the defendant succeeded in his attempt, the plaintiffs will not be able to recover the advance sale consideration. Apart from that, the plaintiff also came to know that the defendant had mortgaged the plaint schedule property with HDFC Bank and there is no assurance on the part of the defendant to discharge the loan. Hence, the plaintiffs sent legal notice dated 30.12.2011 to repay the entire advance sale consideration with 24%

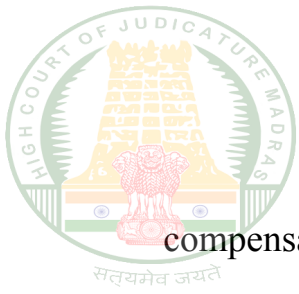


A.S.No.83 of 2019

interest. But, the defendant has not come forward to return the advance sale consideration instead he sent a reply notice dated 05.01.2012 with false allegations. Hence, the suit.

6. The contentions in the written statement filed by defendant in brief are as follows:-

Except the facts, which are admitted herein, all other allegations in the plaint are denied. The execution of the agreement for sale, the Memorandum of Undertaking of the sale in respect of plaint schedule property for a total sale consideration of Rs.1,14,00,000/- and the receipt of total advance sale consideration of Rs.12,40,000/- are admitted by the defendant. The time for performing the agreement for sale is fixed at 3 months. The plaintiffs suffered with some financial problems and as they were unable to mobilise the fund within the time frame, they requested time to pay the balance sale consideration. At this juncture, the defendant informed the plaintiffs that he has vacated his tenant, who was paying rent of Rs.1,25,000/- per month in order to hand over vacant possession of the plaint schedule property at the time of execution of sale deed. The defendant also sustained loss as he had to continue in paying the EMI to his banker and the plaintiffs promised to



A.S.No.83 of 2019

WEB

compensate the loss suffered by the defendant at the time of paying the balance sale consideration. The defendant also instructed his bankers to hand over the original title deed of the plaint schedule property to the plaintiffs after execution of sale deed and the receipt of the entire sale consideration. Even at the time of executing the agreement of sale, the defendant handed over the photostat copies of the title deed of plaint schedule property and also permitted the plaintiffs to peruse the original title deeds available with the bank. During the second week of December 2011, when the defendant approached the plaintiffs for performance of the agreement of sale, the plaintiffs threatened the defendant that they would make defendant's property unmarketable. Thereafter, the defendant through his reply notice has given an opportunity to the plaintiffs to pay the balance sale consideration, but they failed to perform his part of contract. The defendant is at liberty to sell the property to any other prospective buyers since the transaction between the plaintiff and defendant was cancelled and the earnest money was forfeited and adjusted to the loss suffered by the defendant and the suit is liable to be dismissed.

7. On the basis of the above said pleas set out by the respective parties,



A.S.No.83 of 2019

the trial Court framed the following issues for consideration:-

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1. Whether the plaintiff is entitled to recovery of sum of Rs.14,63,200/- from the defendant ?

2. Whether the plaintiff is entitled to future interest at the rate of 24% p.a. on Rs.12,43,000/- from the date of plaint, till the date of realization?

3. Whether the plaintiff is entitled to the decree for permanent injunction restraining the defendant from alienating the suit property ?

4. To what relief ?

8. Before the trial Court, the first plaintiff has been examined himself as PW1 and seven documents were marked as Ex.A1 to Ex.A7. The defendant has been examined himself as DW1 and one document was marked as Ex.B1.

9. The Trial Court, upon considering the evidence on record, decreed the suit. Aggrieved by this judgment and decree of the Trial Court, the the defendant has preferred this First Appeal before this Court.

10. The points for consideration before this Court are as follows:-



A.S.No.83 of 2019

WEB COPY 1. Whether the plaintiffs are entitled to recover a sum of Rs.14,63,200/-

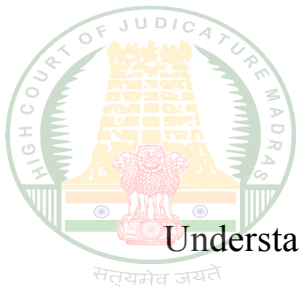
from the defendant with interest at the rate of 24% per annum from the date of
plaint till the date of realisation ?

2. Whether the plaintiffs are entitled to the decree of permanent
injunction as prayed for ?

3. Whether the defendant is not liable to return the advance amount
received from the plaintiffs ?

4. To what other relief?

11. The learned counsel for the appellant/defendant would submit that
the judgment and decree of the Trial Court is contrary to law, against the
weight of evidence and probabilities of the case. The learned counsel further
contended that the Trial Court overlooked the fact that Ex.A.1 and Ex.A.2 are
two different independent agreement executed by the respondents. It contains
different terms and conditions and thereby violating Section 10 of Indian
Contract Act 1872. The suit is barred by law as it did not disclose a cause of
action for filing the suit against the appellant/defendant. The Trial Court
overlooked the fact that Ex.A.1 agreement is an incomplete document and also
failed to take into consideration the refund clause in Ex.A.2, Memorandum of



A.S.No.83 of 2019

Understanding, the appellant is not bound to refund the earnest money. The

defendant/appellant in his reply notice informed the plaintiffs that the defendant/appellant has also vacated his tenant, who was occupying the said premises paying a rent of Rs.1,25,000/- per month to enable the plaintiffs to purchase the property with vacant possession as requested by the plaintiffs. The plaintiffs seeking extension of time to purchase the property and orally promised to compensate the defendant for the loss suffered by the defendant at the time of paying the balance sale consideration. The plaintiffs agreed to compensate the loss of rental income and the loss to the defendant in paying EMI to the Bank for the property . The plaintiffs have to compensate the two losses sustained by the defendant. Therefore the defendant is not bound to repay the earnest money . The Trial Court overlooked the facts and documents, dismissed the suit contrary to the evidence on records and legal principles and hence, the judgment and decree of the Trial Court is unsustainable one and the learned counsel reiterated the other grounds raised in the grounds of appeal and thus, pleaded to set aside the judgment and decree of the Trial Court and allow the appeal.

12. The learned counsel for the respondents/plaintiffs supported the

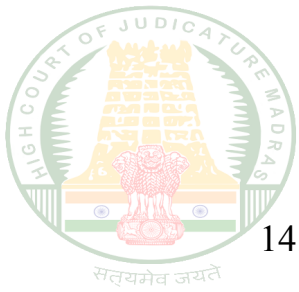


A.S.No.83 of 2019

WEB

judgment and decree of the Trial Court. Further contended that the defendant admitted the agreement of sale (Ex.A.1) and memorandum of Understanding (Ex.A2) and also admitted the receiving of earnest money of Rs.12,40,000/- from the plaintiff against the total sale consideration of Rs.1,14,00,000/-. Further contended that though the defendant pleaded in the written statement that the plaintiffs promised to compensate the loss to the defendant by vacating his tenant and pay EMI to the Bank, he failed to let any evidence with regard to the particulars about the tenancy and payment of rent by the tenant. The Trial Court had rightly observed this in its judgment and rejected the claim of the defendant and rightly decreed the suit. There is no illegality and there is no ground for interference in the finding of the Trial Court and thus, pleaded to dismiss the appeal as it has no merit.

13. I have considered the matter in the light of the submissions made by the learned counsel for the parties and perused the materials available on records carefully.



A.S.No.83 of 2019

14. On perusal of records, the fact reveals that the defendant is the owner of the plaint schedule property. He offered to sell the plaint schedule property to the plaintiff for a total sale consideration of Rs.1,14,00,000/-. In pursuance of this, a sale agreement was entered into between the first plaintiff and the defendant on 15.04.2011 (Ex.A1) and on the same day, memorandum of understanding(Ex.A.2) was also entered into between the second plaintiff and the defendant and thereby, the plaintiffs paid a sum of Rs.2,40,000/- as advance to the defendant by way of a cheque bearing no.350749 drawn on Axis Bank dated 15.03.2011 and another sum of Rs.10,00,000/- by way of a cheque no.001623 drawn on ICICI bank dated 19.04.2011 and thus a sum of Rs.12,40,000/- was paid as sale advance by the plaintiffs to the defendant.

15. The above said fact is admitted by the defendant, in paragraph 2 of his written statement. For better appreciation, paragraph 2 of the written statement is extracted hereunder:-

" 2. The defendant had received a total advance amount of Rs.12,40,000/- from the plaintiff against a total sale price of Rs.1,14,00,000/-. As per the Sale Agreement/MOU, a time period of three months was fixed from the date of agreement for the plaintiff to pay the balance sale consideration and to



A.S.No.83 of 2019

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*enable to the defendant to execute the sale deed in favour of
the plaintiff "*

16. The above said fact is evidenced by Ex.A.1 Sale Agreement (original) dated 15.04.2011, Ex.A.2 dated 15.04.2011 Memorandum of Understanding (original). On perusal, it is noticed that Ex.A.1 Sale agreement dated 15.04.2011(original), both the parties not explained as to why entire papers not filed before the Court. Any how the defendant has not disputed the Agreement of Sale, Ex.A1 and Memorandum of Undertaking, Ex.A2 and the receipt of the advance amount of Rs.12,40,000/.

17. According to the plaintiffs, as the defendant has not disclosed the fact of mortgaging the plaint schedule property with HDFC Bank while entering into agreement, the plaintiffs did not want to conclude the contract and they wanted to refund of the advance amount.

18. On perusal of records, it is noticed that the defendant had not



A.S.No.83 of 2019

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disclosed the fact of mortgaging the plaint schedule property with HDFC Bank at the time of entered into the agreement and Memorandum of Understanding , i.e. Ex.A1 and Ex.A2 and there is no whisper about the said fact.

19. The defence placed by the defendant before the Trial Court is after receiving the notice from the plaintiffs, the defendant has issued reply notice, which is evidenced as Ex.A.4. The defendant alleged to have informed the plaintiffs that his tenant, who was occupying the said premises by paying the rent of Rs.1,25,000/- was vacated in order to enable the plaintiffs to purchase the property with vacant possession as requested by them and thereby, the defendant had lost the rental income from his tenant and unable to pay the EMI to the Bank and thereby, he sustained some loss and hence, he refused to return the advance amount. Unfortunately, the defendant failed to let in clear evidence before the Trial Court, with regard to the specific details, i.e., who was the tenant, what was the rent, when the tenant vacated, what was the EMI, and how much he sustained loss. In the absence of any evidence and materials on record, the defence raised by the learned counsel for the appellant/defendant has no merit. The Trial Court rightly dismissed the defence.



A.S.No.83 of 2019

20. The undisputed fact is that the defendant has received Rs.12,40,000 from the plaintiffs by way of two cheques dated 15.03.2011 for Rs.2,40,000/- drawn on Axis Bank and another cheque dated 19.04.2011 for Rs.10,00,000/- drawn on ICICI Bank and the defendant also admitted the same in his written statement. Under these circumstances, in the absence of any agreement between the parties with regard to bearing the loss sustained by the defendant, the defendant is bound to repay the advance amount received from the plaintiffs with interest. Since there is no agreement for repayment of money with 24%, the Trial Court rightly decreed the suit with 9% interest from the date of suit till the date of decree and thereafter at the rate of 6% per annum till the date of realisation and also rightly restrained the defendant by way of permanent injunction in any way alienating the suit property to any third party till the decree is satisfied. Hence, I find no illegality or irregularity in the judgment and decree of the Trial Court and there is no ground for interference. In view of the above, I find no merit in the appeal therefore, the appeal is liable to be dismissed and the point Nos.1 to 4 are answered against the appellant/defendant .

21. In the result, the judgment and decree of the Trial Court is hereby



A.S.No.83 of 2019

confirmed and the appeal is dismissed with cost. Consequently, connected

miscellaneous petition, if any, is closed.

13.03.2025

Index : Yes / No
Speaking order: Yes/No

mrp

To

1. The II Additional City Civil Court, Chennai.
2. The Section Officer, VR Section High Court, Madras.



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A.S.No.83 of 2019

V.SIVAGNANAM, J.

mrp

Pre-delivery judgment made
in
A.S.No.83 of 2019

13 .03.2025