IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2025

CORAM:

THE HONOURABLE **Mrs.JUSTICE R.KALAIMATHI**

S.A.No.597 of 2023
and
CMP.No.19098 of 2023

M.L.Ganesh .. Appellant/Defendant

Vs.

1.Mailammai
2.P.Parameswari .. Respondents/Plaintiffs

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., to set aside the judgment and decree passed in O.S.No.1405 of 2017 dated 22.02.2019 on the file of the III Additional City Civil Court, Chennai, modifying the judgment and decree in A.S.No.211 of 2019 dated 27.02.2020 on the file of the VIII Assistant City Civil Court, Chennai.

For Appellant : Mr.S.Arunkumar
For Respondents : Mr.S.Srinivasan

JUDGMENT

Challenge is made to the Judgment and decree dated 27.02.2020 passed in A.S.No.211 of 2019 by the VIII Assistant, City Civil Court, Chennai by the defendant herein.

2. The parties are indicated herein as per their litigative status and ranking before the Tribunal.

3. According to the plaintiffs, the plaintiffs were the owners of the suit property. The plaintiffs offered to sell the suit property to the defendant and he agreed to purchase the same. A sale agreement was entered into between them on 02.02.2015. Out of the agreed sale consideration, advance amount was paid in cash and cheque. The period for effecting the sale was fixed at 90 days. As there was some discrepancy found in the patta, the defendant insisted the plaintiffs to obtain a patta afresh. The plaintiffs took steps through their representative Gunasekaran to get a correct patta. The defendant wanted to complete the sale at earlier point of time. The defendant was informed about the steps taken by them in respect of the patta and told him to wait for some time.

3.1.But the defendant wanted the plaintiffs to execute the sale deed with a rider by stating that he would retain a sum of Rs.5,00,000/- from the balance of sale consideration and the said sum will be paid on production of patta , for which, the plaintiffs also agreed for the same.

As agreed upon, the sale deed was executed on 22.04.2015 and on the same day, the defendant issued a letter addressed to both the plaintiffs undertaking to pay the said balance sale consideration of Rs.5,00,000/- to the plaintiffs as soon as the patta is obtained by the plaintiffs. No time limit was fixed in the said letter by the defendant. Apart from enquiring about the patta from the plaintiffs as well as from Gunasekaran, he had also sent letters on 10.07.2015, 09.09.2015 and 01.12.2015 by stating that he wanted to cancel the sale. In fact, the plaintiffs contacted the defendant through the said Gunasekaran, who inturn explained the reason for delay in obtaining the fresh patta. The patta was obtained on 22.08.2016 after a long battle. But the defendant did not bother to pay the balance sale consideration despite the repeated request of the plaintiffs through the said Gunasekaran. A legal notice was caused to be issued to the defendant on 28.11.2016. Despite the receipt of notice, the defendant neither sent any reply nor chose to pay the said amount. Therefore, the plaintiffs laid suit for recovery of said amount.

4. Per contra, the sole defendant would aver that the plaintiffs have failed to file the Sale Agreement dated 02.02.2015. The alleged retainment of Rs.5,00,000/- of sale consideration for want of patta is denied and the entire sale consideration was paid by the defendant, who

had availed loan from the Punjab National Bank. As such, the Sale Deed dated 22.04.2015 was executed by the plaintiffs, wherein they have categorically admitted the receipt of entire sale consideration of Rs.1.10 crores by way of cheques and demand draft, which includes the housing loan from the Punjab National Bank. The plaintiffs have also filed their IT returns for the Assessment Year 2016-2017, wherein it has been declared about the receipt of sale consideration of Rs.1.10 crores.

4.1. The alleged undated letter was given by the defendant prior to the registration of the Sale Deed. The Sale Deed dated 22.04.2015 was wantonly not filed by the plaintiffs. Since the plaintiffs told him that they are going to shift their residence permanently to Coimbatore, they demanded the entire sale consideration and the defendant paid it to them. The plaintiffs handed over the vacant possession of the suit property and permanently shifted their residence to Coimbatore. Thereafter, they never cared and bothered to respond to various letters of the defendant dated 10.07.2015, 09.09.2015 and 01.12.2015 besides his SMS. In his letter, he expressed his difficulties in getting the building sanctioned plan due to discrepancies in the extent of land and sought refund of the entire sale consideration with all charges. The plaintiffs never replied nor remitted the amount claimed by the defendant. The defendant remitted the tax deduction at source for the sale of suit property on 04.08.2016. The plaintiffs have not mentioned about the sale consideration amount they received from the defendant in their plaint. The allegation that the defendant contacted the said broker Gunasekaran for patta is denied. The undated letter is not properly stamped and it is unenforceable under law.

5. Based on the divergent pleadings, the trial court framed appropriate issues. At trial, to substantiate the plant details. Two witnesses have been examined and eight documents have been marked. On the defendant's side, three documents have been marked.

6. The trial Court upon consideration of oral and documentary evidence and after hearing the arguments advanced by either side, held that as per Ex.A2 - letter, the defendant who retained Rs.5,00,000/- out of the agreed sale consideration is bound to repay the same to the plaintiffs with interest at the rate of 9% per annum and the plaintiffs are also entitled to a charge in respect of the suit property as per Section 55 (4) (b) of the Transfer of Property Act, 1882. Aggrieved, the defendant preferred appeal in A.S.No.211 of 2019 before the III Additional City Civil Court, Chennai.

7. Upon consideration of the entire case records and after hearing the arguments advanced by either side, the Appellate Court concluded that as per Ex.A2 - letter, the claim of the plaintiffs stands proved and the plaintiffs are entitled to recover the claim amount but not the interest and allowed the appeal in part with costs throughout. Against the said findings, the defendant has preferred this Second Appeal.

8. The plaintiffs have laid their claim based on the undated letter- Ex.A2 admittedly issued by the defendant. Sum and substance of the defendant's case is that the undated letter - Ex.A2 is given by the defendant prior to the registration of sale deed.

9. First plaintiff's husband one Paramasivam has been examined as PW1. He has filed his proof affidavit in line with the details of the plaint. After obtaining the patta afresh, when the defendant was approached and request was made to him to pay Rs.5,00,000/- which was retained by him, for which the defendant refused to pay the same. Ex.A2 is the undated letter written by the defendant addressed to the plaintiffs No.1 and 2 and the said details of Ex.A2 is extracted hereunder:

From

Mr.L.Ganesh
No.1, Devan Street,
Gandhi Nagar,
Chrompet, Ch.-44.

To

Mrs.Mailammai
Mrs.Parameswari
L111, West Kamaraj Nagar,
Avenue, Thiruvanmiyur,
Ch.-41.

Sir,

Sub : Balance Payment of Rs.5,00,000/-.

I have made the entire sale consideration for the sale of your property except a sum of Rs.5,00,000/- which has been retained for production of patta. As soon as patta is obtained from the Taluk Office, and undertake to pay the sum of Rs.5,00,000/- immediately to you.

10. Ex.A3 is the letter addressed by the defendant to the plaintiffs for getting the patta and he has called upon the plaintiffs to return the sale consideration with other expenses. Ex.A4 and Ex.A5 are the letters dated 09.09.2015 and 01.12.2015 written by the defendant addressed to the plaintiffs herein for the same purpose. Ex.A6 is the pre-suit notice issued by the plaintiffs to the defendant. Ex.A8 - is the copy of the Patta/ Extract of the Town Survey Land Register in respect of the suit property. Ex.B1 is the Sale Deed dated 22.4.2015 executed by the plaintiffs in favour of the defendant. Ex.B2 Letter given by the plaintiffs dated 22.04.2015 addressed to the Assistant General Manager, Punjab National Bank.

11. On a careful perusal of Ex.A2, the document is an undertaking letter given by the defendant, undertaking to pay Rs.5,00,000/- after patta has been obtained from the Taluk Office, he would pay a sum of Rs.5,00,000/-. The amount which is retained for production of patta. By Ex.A2 undertaking letter, the defendant has undertaken to pay a sum of Rs.5,00,000/- after the patta is obtained by the plaintiffs. The defendant in his written statement, has much harped upon the sale consideration details. The plaintiffs have executed sale deed in favour of the defendant and the sale consideration paid was also, is not in dispute. Ex.A2 - Letter explicates that the plaintiffs have to obtain the patta and give it to him and for that purpose, he retained Rs.5,00,000/- towards sale consideration.

12. By examining PW1 and PW2 and by marking the above said documents, the plaintiffs have proved their case. On the other hand, the defendant has to prove his case as per Section 103 of the Indian Evidence Act, 1872. He has not let in any evidence and his pleading in the written statement remains not proved. Had he come to the witness box, his case projected in the written statement would have been cleared by him.

13. In such circumstances, drawing of adverse inference against the defendant by the Court below cannot be found fault with. The undertaking letter indicates clear terms that on production of the patta by the plaintiffs, he shall pay a sum of Rs.5,00,000/- which is a part of sale consideration. The First Appellate Court has concluded that the plaintiffs are not entitled for any interest as there is no mention about the same in Ex.A2. In Ex.A2, the defendant has undertaken to pay a sum of Rs.5,00,000/- as soon as the patta is obtained from Taluk Office. Ex.A8 Patta extract from the Town Survey Land Register explicates the fact that proceedings were passed on 21.07.2016. Patta was granted on 22.08 2016. It was also upheld that the plaintiffs are entitled for relief of charge in respect of the suit property as per Section 55 (4)(b) of the Transfer of Property Act 1882 for the unpaid sale consideration.

14. Based on the aforesaid observations and discussions, this Court does not find any infirmity or perversity in the findings of the Court below. This Court also does not find any good reason to upset the findings of the first appellate court. The substantial questions of law are answered in favour of the plaintiffs.

15. Above being the position, the second appeal stands dismissed. Sequel to this, the Judgment and Decree passed in A.S.No.211 of 2019 by the III Assistant City Civil Court, Chennai., stands confirmed.

i) The defendant to pay a sum of Rs.5,00,000/- being the balance sale consideration retained by him to the plaintiffs.

ii) The plaintiffs are entitled to the relief of charge in respect of the suit property as per Section 55(4)(b) of the Transfer of Property Act, 1882, for the above said unpaid sale consideration, as prayed for with costs throughout. Consequently, connected miscellaneous petition is closed.

24.09.2025

Index : Yes/No

Internet : Yes/No

Speaking : Non speaking order

Neutral Citation : Yes/No

kkd/skn

To

1. III Additional City Civil Court, Chennai,

2. VIII Assistant City Civil Court, Chennai.

R.KALAIMATHI,J.

kkd/skn

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