



A.S.No.135 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Date : 24.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.135 of 2025 &

CMP.Nos.2806 of 2025 & CMP.No.6203 of 2025

Syed Shafiullah Bahmani

... Appellant

Versus

N.Sabiha Banu

... Respondent

PRAYER : Appeal Suit filed under section 96 of Code of Civil Procedure to set aside the decree and judgment dated 27.09.2024 passed in O.S.No.5968 of 2022 on the file of the VII Additional City Civil Court at Chennai.

For Appellant : Mr.S.Dinesh Babu
for Mr.M.A.Abdul

For respondent : Mr.R.Abdul Mubeen



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JUDGMENT

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Challenging the decree and judgment of the trial Court directing the defendant to pay a sum of Rs.13,47,500/- with interest at the rate of 6% per annum, the present appeal came to be filed by the unsuccessful defendant.

2. The parties are arrayed as per their own ranking before the trial Court.

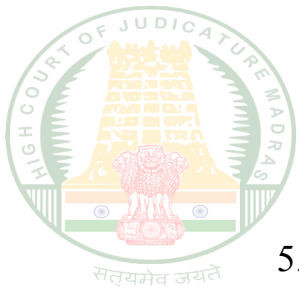
3. It is the case of the plaintiff that the defendant has agreed to sell the property for a total sale consideration of Rs.one crore and agreement of sale was executed on 03.12.2020 and a sum of Rs.10 lakhs had been received as an advance. It is agreed between the parties that the sale shall be completed within a period of two months. After execution of the sale agreement, on 10.12.2020, the defendant received a further advance of Rs.5 lakhs through RTGS transaction and again within a period of one week received an additional advance amount of Rs.3 lakhs by way of cash and Rs.2 lakhs by RTGS on 14.12.2020 and 17.12.2020 respectively. Therefore, according to the plaintiff,



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she had paid a sum of Rs.20 lakhs as an advance towards sale consideration. As the defendant had not discharged the mortgage liability to the bank as agreed by her and in the meanwhile as Covid pandemic struck, the defendant failed to execute the sale deed. Thereafter, the defendant had sold the property to one of her tenant. Therefore, when the plaintiff demanded the advance amount, the defendant paid a sum of Rs.2 lakhs by way of cash and issued 4 cheques for remaining Rs.10 lakhs. When the above cheques have been presented for encashment, the same had been dishonoured on the ground that the payment stopped by the drawer. Hence, after issuing a legal notice, the suit has been filed apart from filing a criminal complaint.

4. In the written statement, though it is admitted by the defendant that she had entered into an agreement for sale of the property for a total sale consideration of Rs.one crore, according to her, she had received only a sum of Rs.10 lakhs and not Rs.20 lakhs and she had also issued two cheques for the said amount. Thereafter, the said cheques have been cancelled. In the meanwhile, she had also repaid a sum of Rs.7,83,500/- out of Rs.10 lakhs. Hence, it is her contention, she is liable to pay only a sum of Rs.2,16,500/-.



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5. Based on the above pleadings, the following issues have been framed
by the trial Court :

1. Whether the plaintiff and defendant had entered into a sale agreement dated 03.12.2020 for a sale consideration of Rs.1,00,00,000/- and the plaintiff had paid an advance of Rs.10,00,000/- to the defendant at the time of execution of Sale Agreement?

2. Whether the plaintiff had paid a total sum of Rs.20,00,000/- within 15 days from the date of execution of the agreement to the defendant?

3. Whether the plaintiff had expressed her readiness and willingness to pay the balance sale consideration in the first week of January 2021?

4. Whether the defendant cheated the plaintiff by selling the 'A' schedule property to some third party during the subsistence of the sale agreement?

5. Whether the defendant is due and liable to pay a sum of Rs.18,00,000/- to the plaintiff with interest?



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6. Whether the defendant had already paid a sum of Rs.7,83,500/- to the plaintiff and is liable to pay the defendant only a sum of Rs.2,16,500/- ?

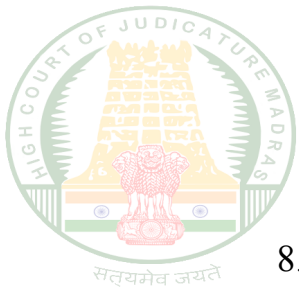
7. Whether the plaintiff is entitled for a sum of Rs.18,00,000/- with interest at the rate of 24% p.a. from the date of plaint till the date of realization from the defendant?

8. Whether the plaintiff is entitled to any other relief?

9. To what other relief, if any, the plaintiff is entitled?

6. On the side of the plaintiff, she examined herself as P.W.1, Ex.A.1 to Ex.A.11 have been marked. On the side of the defendant, she examined herself as D.W.1 and Ex.B.1 to Ex.B.5 have been marked.

7. The trial Court, considering the entire evidence, both oral and documentary, has come to the conclusion that the plaintiff is liable to pay a sum of Rs.13,47,500/- and decreed the suit partly. Challenging the said decree and judgment, the present appeal has been filed.



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8. The learned counsel appearing for the appellant would contend that the trial Court had proceeded as if Rs.20 lakhs advance has been paid. According to the appellant, a sum of Rs.10 lakhs has been paid and out of Rs.10 lakhs, she had already paid a sum of Rs.7,83,500/- and therefore, she is liable to pay a sum of Rs.2,16,500/-alone, which has not been considered by the trial Court.

9. Whereas, the learned counsel appearing for the respondent contended that the trial Court has taken note of all the documents and in fact given credit to Rs.6,52,500/- and held that the remaining amount payable is Rs.13,47,500/-. Therefore, it is his contention that Rs.20 lakhs has not been received by the appellant has no legs to stand. Hence, opposed the appeal.

10. In the light of the above submissions, now that point that arise for consideration is :

Whether the plaintiff is liable to recover a sum of Rs.13,47,500/- from the defendant on the basis of the agreement dated 03.12.2020?



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11. Point :

The suit has been filed for recovery of a sum of Rs.18,00,000/- on the basis of Ex.A.2 sale agreement dated 03.12.2020. Ex.A.2 agreement, when carefully perused, on 03.12.2000, the defendant had agreed to sell the property for a total sale consideration of Rs.one crore. The execution of the agreement is not disputed by the defendant. Further on the date of agreement itself, the defendant had received a sum of Rs.10 lakhs as an advance. Thereafter, it appears that on 10.12.2020, an additional advance of Rs.5 lakhs was received through RTGS and another sum of Rs.3 lakhs has been received as an additional advance by way of cash on 14.12.2020 and on 17.12.2020, another sum of Rs.2 lakhs has been paid through RTGS. The endorsements made on the back side of the agreement makes it clear that on three occasions, totally a sum of Rs.10 lakhs had been received by the defendant and endorsements have also been made in this regard. The very endorsements made on the reverse of the agreement makes it clear that the amounts have been received as an additional advance. Therefore, the contention of the defendant that she has received only Rs.10 lakhs as advance does not hold any water for the simple reason that

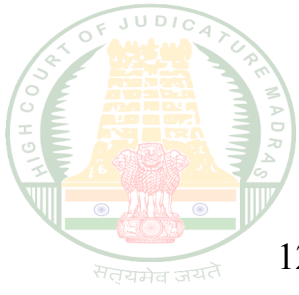


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having admitted in the agreement, the defendant cannot take a contrary stand to that of the contract.

Further, though it is the contention of the appellant that a sum of Rs.7,83,500/- had been paid through G-pay apart from other transfers, these facts have been clearly considered by the trial Court that some payments have been made to some other persons. Though the name of the persons to whom transfer of money had been made is not reflected in Ex.B.5, the trial Court has considered that the transfer of money had not been disputed and in fact, had given credit to a sum of Rs.6,52,599/- and decreed the suit for the remaining sum of Rs.13,47,500/-. The trial Court has infact had given credit to the said amount despite there is no sufficient proof of discharge. In such view of the matter, this Court is of the view that the judgment of the trial needs no interference and the same has to be confirmed. The point is answered accordingly.



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12. In the result, this Appeal Suit is dismissed and the judgment and decree of the trial Court in O.S.No.5968 of 2022 dated 27.09.2024 is confirmed.

Consequently, connected miscellaneous petitions are closed. No costs.

24.04.2025

Index : Yes / No

Internet: Yes

Speaking/non speaking order

vrc

To,

1. The VII Additional City Civil Court, Chennai.

2. V.R.Section, High Court, Madras.



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N. SATHISH KUMAR, J.

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