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A.S.No.693 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2026

CORAM

THE HONOURABLE MR . JUSTICE N.SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

A.S.No.693 of 2023

&

Cross Objection No.26 of 2024

&

C.M.P.No.29145 of 2024

A.S.No.693 of 2023

1. Mr.P.Gunasekar
2. Mr.N.Govindaraj

... Appellants

Versus

Mr.S.Dhanabalan

... Respondent

First Appeal filed under Section 96 of CPC to set aside the judgment and decree of learned I Additional District and Sessions Judge, Tiruppur in O.S.No.107 of 2021 dated 07.08.2023.

For Appellants : Mr.J.Franklin

For Respondent : Mr.N.Ponraj



A.S.No.693 of 2023

Cross Objection No.26 of 2024

S.Dhanabalan

Vs.

... Cross Objector

1. P.Gunaksekar
2. N.Govindaraj

... Respondents

Cross Objection filed Order XLI Rule 22 of CPC to set aside the judgment and decree dated 07.08.2023 made in O.S.No.107 of 2021 on the file of I Additional District Court and Sessions Judge, Tiruppur in respect of disallowed interest portion by allowing this Cross Objection and enhance the interest awarded from 6% to 10%.

For Petitioner : Mr.N.Ponraj

For Respondents : Mr.J.Franklin

COMMON JUDGMENT

(Judgment of the Court was made by **N.SATHISH KUMAR, J.**)

Unsuccessful defendants are before this Court challenging the judgment and decree of I Additional District and Sessions Judge, Tiruppur decreeing the suit for a sum of Rs.1, 25,00,000/- with interest at the rate of 9% per annum from the date of release deed dated 30.11.2020 till the filing of the suit and thereafter 6% per annum from the date of suit till the date of realisation.



2. The parties are referred to by their respective ranks before the trial

3. The brief facts of the case are as follows:

The suit property was originally purchased by the defendants and plaintiff jointly on 22.04.2013. Though the property was originally purchased as a vacant site, out of the joint efforts and common funds of the plaintiff and defendants 1 and 2, buildings were constructed and they started a partnership business under the name and style “Stylz Wear”. Later due to misunderstanding, the partnership business was dissolved and the plaintiff was relieved from the partnership firm and Profit and Loss account was also finalized between the partners. While dissolving the partnership, the immovable properties were also taken into account and it has been agreed between the parties that in lieu of the plaintiff’s 1/3 share in the immovable properties, Rs.1,25,00,000/- was agreed to be given by the defendants. Pursuant to the same, a release deed dated 30.11.2020 was executed by the plaintiff in favour of the defendants. Though in the release deed itself, the defendants agreed to issue a cheque in favour of plaintiff for Rs.62,03,125/- each and Rs.46,875 has to be deducted towards TDS from the payment made



A.S.No.693 of 2023

by the defendants, the cheques were not received. In the meanwhile, the defendants also issued stop payment. In a nutshell, it is the contention of the plaintiff that the consideration as agreed between the parties in the release deed has not been paid to him by the defendants. Therefore, the release deed itself is *non est* in law. Hence, the plaintiff filed a suit for recovery of money from the defendants.

4. The defendants admits that suit properties were originally purchased by the plaintiff and defendants jointly. It is also admitted that they ran the partnership business in the said premises and they also availed loan by mortgaging the property with the Bank. It is the contention of the defendants that subsequently they also purchased 43 and 50 cents from the firm's income and construction was also put up from the firm's income. According to the defendants, there was misunderstanding between the parties and hence the plaintiff retired from the partnership firm on the following terms:

“i) That defendants being continuing partners shall own the properties purchased and building constructed in suit property along with the property purchased in the name of 2nd respondent/defendant.

ii) The properties purchased by the firm in the name of



A.S.No.693 of 2023

plaintiff and his wife shall be retained by them.

iii) The plaintiff shall settle sum of Rs.1,51,30,000/- towards his Debt share for the CC & PCL Loan due payable by the firm to the banker in lieu of redeeming the mortgage created in the property of plaintiff's wife Nithya;

iv) Likely defendants sold knitting unit of M/s.Stylz Wear to plaintiff in consideration of plaintiff taking over term loan of Rs.1,51,29,888/- standing due under the loan account of the firm vide loan account No.0492TL0100000170. The said agreement for sale of plant and machinery of knitting unit of the firm was reduced to writing under agreement dated 28.11.2020. The said original was retained by the plaintiff and hence the photocopy of the said agreement dated 28.11.2020 is produced herewith as document no.1.

v. Further it was agreed that the plaintiff shall close EPCG (Export Promotion Capital Goods) obtained for Knitting machinery by complying corresponding export obligation to fulfil the value of Rs.5,65,00,000/- the same was recited in the partnership retirement deed dated 30.11.2020. The said partnership retirement deed is produced herewith as document no.2(In case the plaintiff fails to comply with the export obligation, then the firm M/s.Stylz Wear alone has to comply the export obligation. If the firm is supposed to comply export obligation then the plaintiff is bound to reimburse /compensate the loss sustained to the firm M/s.Stylz Wear);



A.S.No.693 of 2023

vi. *The plaintiff agreed to pay sum of Rs.67, 85,204/- to the Sundry creditors of the firm under agreement dated 30.11.2020.*

The agreement dated 30.11.2020 is herewith produced as document no.3.”

5. It is the case of the defendants without clearing the loan availed from the Bank and also without clearing dues of the sundry creditors, the plaintiff has filed the present suit for recovery of money. Hence, in a nutshell, it is the contention of the defendants that the plaintiff is liable to pay the sum as agreed in the Sundry Creditors Agreement dated 30.11.2020 and agreement for sale of Plant and Machinery dated 28.11.2020. In a way, it is the contention of the defendants that the plaintiff has to pay the amount, which is in the nature of set off or counter claim. However, neither set off nor counter claim has been pleaded and no court fee was paid. The suit has been filed in the individual capacity.

6. Based on the pleadings, the trial Court framed the following issues:

Issues were framed for consideration on 12.01.2022:

i) Whether the Plaintiff is entitled to recovery of suit claim with interest as prayed for?

ii) Whether the Plaintiff is entitled to create Charge over the suit property?



A.S.No.693 of 2023

iii) *To what other reliefs?*

Additional issues framed on 08.12.2022:

i) *Whether the Plaintiff agreed to settle the amounts claimed by the defendants in their Written Statement?*

ii) *Whether the Plaintiff has failed to settle the Amounts as per the Deed of Retirement Deed dated 30.11.2020?*

7. On the side of the plaintiff, one witness was examined as PW1 and Exs.A1 to A13 were marked and on the side of the defendants, three witnesses were examined and Exs.B1 to B14 were marked.

8. The trial Court, based on the oral and documentary evidence, decreed the suit vide judgment and decree dated 07.08.2023. Challenging the said judgment and decree, the defendants have filed the present appeal.

9. The main point urged before this Court by the learned counsel for the appellants/defendants is that the plaintiff, who has entered into two other agreements viz., Agreement for Takeover of Sundry Creditor dated 30.11.2020 (Ex.A10) and Agreement for Sale of Plant and Machinery dated (28.11.2020), has conveniently chosen to file a suit based on Ex.A2 release deed dated 30.11.2020. In other words, it is the contention of the defendants that the plaintiff has to clear the loan availed in the name of the firm to the Bank and also pay the Sundry creditors of the firm as agreed in the

7/14



A.S.No.693 of 2023

agreement dated 30.11.2020 and another agreement for sale of plant and machinery dated 28.11.2020. The dissolution of the firm has happened due to the various arrangements between the parties. Only when the plaintiff has agreed to clear certain loans, the defendants have agreed to pay Rs.1.25 Crores towards the share in the immovable property. However, the plaintiff has not complied with the export obligation and has not paid the amount towards Non-Eligible GST refund as per GST Audit Observations dated 09.03.2020. Therefore, it is the contention of the defendants that the trial Court ought not to have decreed the suit. It is the further contention of the defendants that now to enforce the agreement for taking over of Sundry Creditors entered into between the plaintiff and defendants (Ex.A10) and Agreement for Sale of Plant and Machinery (Ex.B1) entered between M/s.Stylz Wear and M/s.Sakthi Vinayaga Knits, a suit in C.O.S.No.25 of 2023 has also been filed before the Commercial Court (Principal District Judge), Tiruppur whereas the learned counsel appearing for the respondent would submit that the evidence of the parties particularly DW1 clearly indicate that the liability accepted by the plaintiff has already been cleared and payments have also been made and there is a clear admission of the parties in this regard and that apart, in respect of those issues, already a suit



A.S.No.693 of 2023

in C.O.S.No.25 of 2023 has been laid and the same is pending before the Commercial Court (Principal District Judge), Tiruppur and that cannot be canvassed before this Court whereas the present suit is with regard to recovery of money admittedly agreed to be paid towards the share in the immovable property. Therefore, the present suit has been filed only in individual capacity and no way connected with the partnership liability. In any event the defendants have already filed a suit to enforce the other agreements i.e., Ex.A10 and Ex.B1 and therefore, the appeal has to be dismissed.

10. In the light of the above submission, the point that arise for consideration in this appeal is “Whether the appellants are entitled to convass different agreement in this appeal in the absence of set off or counter claim pleaded and whether the plaintiff is entitled to recovery of money?”.

Points 1 and 2

11. The suit has been filed by the plaintiff for recovery of a sum of Rs.1.25 Crores towards the amount of his 1/3rd share in the immovable property. Admittedly the properties were purchased jointly by the plaintiff and defendants as a vacant site and later the construction was put up and



A.S.No.693 of 2023

they were doing the partnership business. These aspects are not in dispute and admitted in their pleadings. It is also not in dispute that due to some misunderstanding among the partners, the partnership firm was dissolved by the Deed of Dissolution. This aspect is also not in dispute. While dissolving the partnership among the partners, Ex.A2-Release Deed dated 30.11.2020 came to be executed by the plaintiff in favour of the defendants. The consideration for executing the said release deed is Rs.1.25 crores for releasing the 1/3 rd share of the plaintiff in the immovable property ,which were purchased him along with Defendants 1 and 2. Towards the said consideration of Rs.1.25 Crores though it is stated in the release deed that cheques have been issued by the defendants, the evidence of the parties clearly show that cheques have not been issued and before issuing the cheques, stop payment was given by the defendants. Non-issuance of the cheque is also admitted by the defendants. Therefore, it is very clear that consideration for release of the immovable property has not been passed on to the plaintiff. It is also admitted by the parties that at the relevant point of time, Ex.A10 dated 30.11.2020 came to be executed between the parties in which plaintiff has taken the responsibility to clear sundry creditors around 67 lakhs. Similarly under Ex.B1 dated 28.11.2020 viz., Agreement for sale



A.S.No.693 of 2023

of Plant and Machinery also entered and plaintiff's father has agreed to pay certain amount. According to the defendants those amount has not been paid whereas the counsel appearing for the respondent brought to the notice of this Court the deposition of DW1 wherein the defendants have admitted that the amount agreed to be paid in Ex.A10 has already been paid and DW2 in his evidence has also stated that except this amount, no other amount is payable by Sakthi Vinayaka Company.

12. Be that as it may, whether that amount has been paid or not or the amount has been completely discharged by the plaintiff is not an issue in the case on hand but admittedly with regard to two documents executed on 30.11.2020 and another on 28.11.2020, a separate suit already been filed by the defendants in C.O.S.25 of 2023 pending on the file of Commercial Court (Principal District Court), Tiruppur.

13. As separate suit is pending between the parties regarding the same issue, Ex.A10 and B1 cannot be pressed into service by the defendants in this case. The present suit is only a simple suit for recovery of money payable towards the release of share in the immovable property. If really the defendants wanted set off or make a counter claim, they should have pleaded the same in their written statement filed in the present suit. Having failed to



A.S.No.693 of 2023

take a plea of either set off or counter claim, liabilities said to have been agreed in those agreements by the plaintiff cannot be canvassed in the present suit.

14. In such view of the matter, it is for the defendants to establish their rights based on the agreements Ex.A10 and Ex.B1 in the pending suit i.e.,C.O.S.25 of 2023. In the present case, admittedly the immovable properties were purchased by plaintiff and defendants jointly and they have 1/3rd share each and only to release the plaintiff's 1/3 share, the suit amount was agreed to be paid. It is the admitted case of the defendants that said amount has not been passed on. Such being the position, learned District Judge is right in decreeing the suit for recovery of money , which is only a consideration for releasing the right in the immovable property.

15. As far as the liability arising out of the partnership business is concerned, a separate agreements have been entered into between the parties which are already a subject matter of the suit pending in C.O.S.25 of 2023 before the Commercial Court (Principal District Court), Tiruppur. In such view of the matter those disputes can be agitated only in the said suit. Accordingly, the points answered in favour of the plaintiff.



A.S.No.693 of 2023

16. As regards the Cross Objection is concerned, according to the cross objector/respondent the trial Court ought to have granted interest at the rate of 10% pending suit as well as after decree. The trial Court has granted interest at 9% per annum from the date of release deed to the date of filing of suit and 6% interest was granted from the date of suit till the date of realization. According to learned counsel, the trial Court ought to have granted the increased rate of interest. Normally after decree only 6% interest will be payable. Considering the nature of the dispute and the fact that defendants agreed to pay some amount through cheque during registration, but later the said amount has not been paid, we are of the view that the interest awarded by the trial Court does not require any interference. Hence, the cross-objection is liable to be dismissed.

In the result, this appeal and Cross Objection are dismissed and the judgment and decree passed by the trial Court is confirmed. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

[N.S.K.,J.] [R.S.V.,J.]
02.02.2026

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13/14



WEB COPY



A.S.No.693 of 2023

N.SATHISH KUMAR, J.,
AND

R. SAKTHIVEL, J.,

gpa

To

1. I Additional District and Sessions Judge,
Tiruppur
2. The Section Officer
VR Section
Madras High Court

A.S.No.693 of 2023

02.02.2026