

P. Murugesan Vs. S. Avinasilingam Chettier (Died) and ors.

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Court : Chennai

Decided On : Aug-03-1998

Reported in : (1998)3MLJ444

Appellant : P. Murugesan

Respondent : S. Avinasilingam Chettier (Died) and ors.

Judgement :

I. David Christian, J.

1. Appeal against the judgment and decree made in A.S.No. 21 of 1982 dated 21.9.1982 on the file of the First Additional Subordinate Judge, Coimbatore confirming the decree granted in favour of the plaintiff in O.S.No. 436 of 1981 on the file of the Third Additional District Munsif, Coimbatore dated 1.10.1981.

2. The twice defeated defendant is the appellant in the second appeal.

3. The plaintiff Avanasilingam Chettiar filed a suit against the defendant praying for damages of Rs. 10,000 alleging that the plaintiff, defendant and two others constituted a partnership firm under the name and style 'M/s. Metal and Glass Industries, Madras', that the partnership firm was registered on 29.12.1962, that even before that on 4.7.1962, the plaintiff has purchased the suit property in Tiruvanmiyur under a sale deed dated 4.7.1962, that the said property was purchased in the name of the plaintiff, defendant and other two persons who were

the partners of the abovesaid firm, that on 31.3.1963, the defendant has retired from the partnership firm, that on 15.2.1972 the partnership was dissolved and a deed of dissolution was executed by the plaintiff and two other partners, that the other two partners have executed a release deed on 20.2.1972 releasing their rights in respect of the property situated in Tiruvanmiyur in favour of the plaintiff, that the plaintiff has thus become entitled to the property situated in Tiruvanmiyur, that the plaintiff wanted to dispose of the Tiruvanmiyur property and purchased a property for starting a factory at Coimbatore, that he issued a notice to the defendant on 1.10.1973 informing him of his intention to sell the Tiruvanmiyur property, that the defendant sent a reply on 4.10.1973 raising false contentions and claiming a share in respect of Tiruvanmiyur property, that the defendant has wanted to take advantage of his name also finding a place in the original sale deed, that the defendant is not entitled to any share, that therefore, the plaintiff was constrained to file a suit in O.S.No. 980 of 1974 before the City Civil Court, Madras for declaration of his right in respect of the Tiruvanmiyur property impleading the first defendant is the defendant in the suit. That the suit was first decreed as ex parte on 17.7.1976, that the plaintiff could not sell the property because the defendant was contesting his rival claim over the property, then if the plaintiff had sold the property in 1973, it would have fetched him a very good price that he would have purchased a property in Coimbatore from the sale proceeds, that because the plaintiff was not able to sell the property in Tiruvanmiyur, he was forced to sell the property situated in R.S. Puram, Coimbatore belonging to his wife for a very low sum, that the property belonged to the plaintiff's wife situated in R.S. Puram, Coimbatore was sold for Rs. 55,000, that he was compelled to sell the property, because he was not able to sell the Tiruvanmiyur property, that in the mean time, the Tamil Nadu Urban Land Ceiling Act, 1976 came into force and created lot of complications in selling the property, that the value of Tiruvanmiyur property fell down, that the plaintiff has sustained damages for Rs. 10,000 due to the unreasonable attitude of the defendant and that therefore, he has filed a suit claiming damages of Rs. 10,000 caused because of the act of the defendant.

4. The defendant contesting the claim of the plaintiff by filing the written statement contending that the defendant did not retire from the partnership firm on 30.3.1963 as alleged by the plaintiff, that the defendant is not aware of the dissolution of the

partnership alleging to have taken place on 15.2.1972, that the defendant did not execute any release deed in favour of the plaintiff, that the defendant has got rights in the partnership firm, that the defendant entitled to 1/4th share in the Tiruvanmiyur property purchased for the partnership firm, that therefore, the plaintiff cannot sell the entire property as it belongs to him, also that the defendant only replied to the notice sent by the plaintiff stating that he is entitled to 1/4th share in Tiruvanmiyur property, that the plaintiff filed a suit in O.S.No. 980 of 1974 which is still pending, that the R.S. Puram Coimbatore property has been sold by the plaintiff for a very good price, that the plaintiff has not suffered any damages and that therefore, the suit may be dismissed.

5. The plaintiff examined himself as D.W.1 and has filed Exs.A.1 to A.14 documents. The defendant examined himself as D.W.1 and has filed Exs.B.1 to B.3 documents.

6. On consideration of evidence, oral and documentary, the learned District Munsif gave findings to the effect that the defendant has retired from the partnership firm even in 1963, that he has not participated in any of the affairs of the partnership firm subsequent to 1963, that the partnership was dissolved and the property situated in Tiruvanmiyur has been released in favour of the plaintiff by the other two partners, that the right of the plaintiff to the Tiruvanmiyur property has been upheld in the previous suit itself, that because of the unreasonable conduct of the defendant, the plaintiff has been prevented from selling the Tiruvanmiyur property in between 1973 and 1976, that the price of Tiruvanmiyur property has come down because of the Act 34 of 1976, that the plaintiff has been forced to sell the building in R.S. Puram, Coimbatore, because of the obstruction placed by the defendant, that the plaintiff has suffered damages and therefore, awarded a sum of Rs. 10,000 as damages by decreeing the suit as prayed for with costs.

7. Aggrieved by the said findings and decree granted by the trial court, the defendant preferred an appeal in A.S.No. 21 of 1982 before the I Additional Subordinate Judge in Coimbatore. The learned Subordinate Judge, Coimbatore by the impugned judgment dated 21.9.1982 dismissed the appeal confirming the findings and decree granted by the trial court. Therefore, the defendant has come

forward with this second appeal.

8. At the time of admission of the appeal, this Court has formulated the following substantial question of law as arising for consideration:

Have not the courts below committed an error of law in assessing damages, based on the loss suffered in extraneous transactions and determining the quantum, without reference to actual loss allegedly suffered by the respondent.

9. The Points:- The plaintiff has been successful in obtaining a decree for damages of Rs. 10,000 as prayed for, by him in the suit alleging that he has suffered the said damages because he has been prevented from selling the property situated in Tiruvanmiyur near Madras, when he wanted to dispose it between 1973 and 1976 and that he has suffered because the price came down after 1976. It is also alleged by the plaintiff that he wanted to dispose the Tiruvanmiyur property and to purchase another property with the sale proceeds in Coimbatore and since he was prevented from selling the Tiruvanmiyur property, he was forced to sell a building situated in R.S. Puram, Coimbatore for a low price and it actually belonged to his wife. So, on account of an unreasonable conduct of the defendant, the plaintiff is said to have suffered the damages and be valued the damages at Rs. 10,000 for which he laid the claim by filing the suit.

10. It is not in dispute that the landed property measuring about 3 grounds was purchased by the plaintiff, defendant and another person under Ex.A.9 sale deed dated 4.7.1962 for a sum of Rs. 50,000. It is also not disputed that even though the property was purchased in the individual names of the plaintiff, defendant and another person, the same was purchased for the partnership firm M/s. Metal and Glass Industries, Madras which itself has come into existence as a result of deed of partnership between the plaintiff; defendant and two others on 23.12.1962. So, the plaintiff, defendant and two others were partners in the partnership firm and the property in Tiruvanmiyur was purchased for the partnership firm and the partnership firm has been dissolved in the year 1972 under Ex.A.4, dissolution deed dated 18.2.1972. The partnership consists of four persons including the plaintiff and the defendant. Ex.A.4 dissolution deed of partnership firm was executed by the plaintiff, one Nataraja Chettiar and Pradhan Kumar and three of

the four partners who originally constituted the partnership firm. It is the case of the plaintiff, that even in March 1963 the defendant ceased to be a partner and he retired from the partnership firm. Admittedly, there was no deed of retirement and no resolution of partnership when the defendant is said to have retired from the partnership firm. Evidence has been let in the previous suit and it cannot be now disputed that the defendant has actually retired from the partnership firm even in the year 1963. But the fact remains that the retirement of partnership on the part of the defendant is not evidenced by any document and the three other partners have not cared to send any notice about the retirement of the defendant as partner. The entire partnership was dissolved in 1972 under Ex.A.4 dissolution deed. Ex.A.5 is the release deed executed by the two other partners in favour of the plaintiff dated 20.2.1972, as per which they released their rights and claims in respect of the Tiruvanmiyur property in favour of the plaintiff. The plaintiff therefore, has become entitled to the Tiruvanmiyur property on the dissolution of the partnership firm and after release deed executed by the other partners in respect of the suit property.

11. It is stated by the plaintiff that about 1973 he wanted to dispose of the Tiruvanmiyur property and with the sale proceeds to be realised from that sale, he intended to purchase a property in Coimbatore for the purpose of starting a factory of his own. So, the plaintiff could have straight away sold the property to any prospective buyer, if he had confidence that he got absolute title in respect of the suit property. The plaintiff by this time must have realised that the original sale deed in respect of the Tiruvanmiyur property stands in the name of himself, the defendant and other two partners. So far as the other partner concerned, the plaintiff has obtained Ex.A.5 release deed and therefore, there could be no difficulty, so far as they are concerned. But, still the original sale deed stood in the name of the defendant also. From him, the plaintiff has so far not obtained any release deed, even though it is stated that the defendant has actually retired from the partnership firm even in 1963, about 10 years prior to the dissolution of the partnership firm. Therefore, the plaintiff himself had some doubts with regard to the claim likely to be made by the defendant and this made him to issue a notice to the defendant on 1.10.1973 stating that he intended to sell the Tiruvanmiyur property and that the defendant could have no objection for the same. Ex.A.6 is

the copy of the notice sent by the plaintiff to the defendant. Ex.A.7 is the reply dated 4.10.1973 wherein the defendant has stated that he has not retired from the partnership firm, that he still got 1/4th share in the assets of the partnership firm including the property situated at Tiruvanmiyur which admittedly was acquired for the benefit of the firm. So, in the absence of any deed of retirement or in the absence of any relinquishment of his share in the partnership firm, it cannot be said that the defendant was very unreasonable when he claimed 1/4th share in Tiruvanmiyur property. But, any how the mere claim by the defendant in respect of the Tiruvanmiyur property could not have resulted in the plaintiff being not able to sell the property. In fact, I am at a loss to find out as to why the plaintiff at the first instance issued a notice to the defendant inviting him thereby to raise his own claim in respect of the Tiruvanmiyur property. If the plaintiff was satisfied with his title to the entire Tiruvanmiyur property by virtue of Exs.A.4, A.5 and Ex.A.9, he could have sold the property to any prospective buyer. It is alleged by the plaintiff that he intended to sell the Tiruvanmiyur property to one Daisy Thomas. There is absolutely no evidence or explanation as to why this Daisy Thomas subsequently withdrew her offer. In fact, the plaintiff has not produced any agreement of sale entered between himself and Daisy Thomas in respect of purchase of the Tiruvanmiyur property. Even in the notice sent to the defendant, the plaintiff has not stated that Daisy Thomas has agreed to purchase the property for a reasonable price. But, she insisted upon getting a clearance from the defendant. If Daisy Thomas has insisted upon such clearance being obtained from the defendant, it cannot be said that she was not reasonable. After all the name of the defendant finds a place in the original sale deed and the plaintiff must not have been in a position to satisfy Daisy Thomas of his right to sell the property exclusively without the aid of the defendant. Moreover, apart from mere statement made in the plaint and in evidence, there is absolutely nothing to show that Daisy Thomas has offered to purchase the property or that the offer was withdrawn because the defendant has raised his objections staying his rival claim in respect of 1/4th share. It was not the defendant who went and filed a suit and obtained any injunction restraining the plaintiff from making any alienations. Instead of ignoring the contentions raised by the defendant in the reply notice because the plaintiff must have been sure of his title, the plaintiff himself filed Ex.A.14 suit in O.S.No.

980 of 1974 on the file of the City Civil Court, Madras praying for declaration of his title in respect of the Tiruvanmiyur property. There is absolutely nothing to show that the would-be purchasers of Tiruvanmiyur property insisted upon the plaintiff to file the suit and to obtain clearance of his title in a civil court. So, the plaintiff himself has volunteered to file the suit and it cannot be stated that the defendant was very unreasonable in making a claim for 1/4th share in the suit property, because admittedly there were no records to show that the defendant has retired from the partnership firm with effect from March, 1963. However, after contest the suit was disposed of in the year 1979 holding that the plaintiff is the absolute owner of the Tiruvanmiyur property. But, this decision no doubt has become final also because, the defendant has not preferred any appeal against the decision Ex.A. 14. But, however, at the time when he sent reply to the notice issued by the plaintiff and when he contested the suit, he made a claim to 1/4th share on the ground that the original sale deed stood in the name of himself, the plaintiff and two other partners. However, on evidence and on merits, it was held that the plaintiff is the absolute owner and the defendant has no right whatever in respect of the Tiruvanmiyur property. It must always be remembered that the notice was first issued by the plaintiff inviting the defendant to contest his claim and it was again the plaintiff who filed the suit and obtained a judgment in his favour only in 1979. It would be a different case, if the defendant has gone to the court, filed the suit without any basis and has obtained an injunction against the plaintiff restraining him from alienating the property. But, this is a case where the plaintiff himself felt the necessity of filing a suit and getting a decree of declaration, because there was no written deed of dissolution of partnership nor release deed executed by the defendant who was any how admittedly a partner in the partnership firm when it was first started in the year 1962. Therefore, by no stretch of imagination, it could be stated that it was the defendant who drew the plaintiff to go to the civil court. More- over, there is nothing to show that because of the rival claim made by the defendant in his reply or in his suit, the plaintiff was not able-to find a prospective buyer for the Tiruvanmiyur property. It is not the case of the plaintiff that the defendant caused any publication in papers refuting the title of the plaintiff or questioning his right to alienate the property itself. There is also no evidence to show that Daisy Thomas has withdrawn her offer, because of the

contentions raised by the defendant. It is also not in evidence that the plaintiff could not find buyers for the property or the prospective buyers were intimidated or threatened by the defendant from taking the sale deed from the plaintiff. So, there is absolutely no evidence to show that the plaintiff was prevented from selling the property because of the claim raised by the defendant. There is also no evidence to show that any prospective buyer for the Tiruvanmiyur property withdrew his offer after knowing about the contentions raised by the defendant, either in the reply notice or in the written statement filed in the previous suit. The plaintiff himself volunteered to go and file a suit before the City Civil Court and naturally, during the pendency of the suit initiated by the plaintiff himself, the buyers would have shied away from purchasing the property. But, by no stretch of imagination, it could be stated that the defendant was the cause for driving away the would-be purchasers or the prospective purchasers of the Tiruvanmiyur property.

12. The suit was taken on file only in 1974 even though it is stated that it was filed earlier in 1973. The suit was first decreed as ex parte and for restoration, some time should have taken place and. it is not known as to why the plaintiff did not dispose of the Tiruvanmiyur property having obtained an ex parte decree Any how, the suit was filed by the plaintiff and there could have been no injunction against himself in alienating the property notwithstanding the pendency of the said suit.

13. The suit has been disposed of in the year 1979. It is stated by the plaintiff that from 1973, he was prevented from selling the Tiruvanmiyur property because of the hostile attitude of the defendant. It is also alleged by the plaintiff that in the mean time the City Tenants Protection Act 31 of 1976 has come into force and the prices of real estate fell down very much in Madras City. So far as this proposition is concerned, there is absolutely no evidence. Both the lower courts seem to have been impressed by the argument advanced on behalf of the plaintiff that because of this Act, the prices of urban land came down heavily in the market. But, the prices of lands in and around Madras city has been steadily slowly raising even from 1970 and the Act did not make any marked difference in the market and it cannot be stated that because of this Urban Land Act, the prices of lands in city came down heavily. Any how, the Act came only in the year 1976 and by that time, the plaintiff himself has purchased a property in Coimbatore in 1974 itself and

therefore, there is no point in the plaintiff contending that the prices came down in 1976 due to the above said Act. There is absolutely no evidence with regard to the prevailing market price for the Tiruvanmiyur property when the plaintiff wanted to sell it in 1973. Strangely, the plaintiff does not even state that he sold the Tiruvanmiyur property any time after 1976 or after 1979 when the case was disposed of. If the plaintiff is able to prove that he has purchased at higher price in 1962 but sold it at lesser price, subsequently, one can understand the complaint of the plaintiff. But, the plaintiff has nowhere stated as to whether he was compelled to sell the Tiruvanmiyur property at any time for a lesser price. The learned Counsel for the respondent is not even able to tell as to when the Tiruvanmiyur property was disposed of and if really disposed of, what is the price the plaintiff got. It is quite probable that the plaintiff was possessed of the said Tiruvanmiyur property, in which case he might have sold it in 1980s when the prices of land properties in and around Madras city has sky rocketed. In the absence of any evidence to show that the property was disposed of subsequently for a lower price which is not probable. The plaintiff cannot be heard to complain that he suffered damages because he was not able to sell the property in between 1973 and 1976. There is absolutely no evidence to show that the plaintiff made serious attempts to sell the Tiruvanmiyur property, inspite of which he was prevented from selling the property because of the act of the defendant. The plaintiff cannot complain that the suit was filed by him in 1974 was kept pending till 1979. It was the plaintiff who rushed to the court and not the defendant. Therefore, there is no evidence to show that the plaintiff was not able to find any reasonable price for the property inspite of his best efforts. Therefore, the first premise on the basis of which claim for damages is made falls to the ground.

14. The next contention of the plaintiff is that because he was not able to sell the Tiruvanmiyur property, he was forced to sell a residential building situated in R.S. Puram in Coimbatore belonging to his wife to enable him to purchase a property at Tatabad in Coimbatore itself for running a factory of his own. There is absolutely no evidence to show that is the extent, or what type of building that was sold which was situated in R.S. Puram. It is stated that R.S. Puram building belonged to his wife and it was sold for Rs. 55,000 in 1974. The plaintiff would contend that he was compelled to sell the property because he was not able to sell the

Tiruvanmiyur property. In the absence of particulars with regard to the extent, nature of building, the other facilities commanded by the R.S. Puram property, one cannot conclude as to whether the price obtained by the plaintiff of Rs. 55,000 is reasonable or not. There is absolutely no evidence on the side of the plaintiff to show that the market price of the said building was more than Rs. 55,000. The plaintiff is also said to have purchased a property situated at Tatabad in Coimbatore with the sale proceeds realised from the sale of R.S. Puram Building. In respect of that building also, no particulars have been given. I am not in a position to understand as to both how the courts below came to the conclusion that the price of Rs. 55,000 fetched by the sale of R.S. Puram building is lower than the then prevailing market rate. Even the guideline value of the properties sold has not been furnished by the plaintiff. The plaintiff has not produced any sale deeds in respect of sale of similar properties in Coimbatore at the relevant point of time to show R.S. Puram property was sold for a lower price as now alleged by the plaintiff. So, there is no evidence to show that the plaintiff was prevented from selling the Tiruvanmiyur property because of the acts of the defendant. There is nothing to show that the prospective buyers were all driven away by any public claim or notice made by the defendant in respect of the property offered for sale by the plaintiff. There is also no evidence with regard to the prevailing market price When R.S. Puram building was sold. Similarly, there is also no evidence to show that the plaintiff had paid any higher price for taking a sale deed in respect of Tatabad property. In the absence of all these material particulars, it is surprising to note that both the courts below have preferred to grant decree awarding damages on an imaginary plea made by the plaintiff.

15. The lower appellate court has relied upon a decision rendered by the Supreme Court in *Moulla Bukks v. Union of India* : (1970)11LLJ211Mad . That was a case for damages arising out of breach of contract. Even in that decision, the Supreme Court has finally held that 'where the aggrieved party is in a position to lead evidence as to the loss or damage suffered by him, but does not do so, he cannot be entitled to any relief by way of compensation. In awarding damages for breach of contract where the damages has been specified by way of liquidated damages the court need not go into the question of actual loss or damage suffered by the complaining party if damages can be inferred from breach of contract. But, so far

as the present case is concerned, the claim of the damages is not based on a contract or alleged breach of contract. The plaintiff has based his claim for damages on the alleged unreasonable conduct of the defendant which is said to have prevented him from selling the property belonging to him and also selling the property at a lower price than the prevailing market price. So, in the absence of any evidence to prove all these things, both the courts below were not justified in awarding damages. First of all, it cannot be said that the defendant acted in a mala fide manner or put up untenable claim purposely or wantonly to cause loss to the plaintiff. The defendant has not gone to the court nor has obtained any injunction restraining the plaintiff from alienating the property and there is also no evidence to show that the plaintiff actually made any sincere attempts to sell the property for a reasonable price and it is also subsequently not made out that the plaintiff has actually suffered any loss in disposing of the Tiruvanmiyur property. There is no evidence to show that at what time, the plaintiff actually sold the Tiruvanmiyur property and if so for what price. So, in the absence of all these material particulars, the lower courts have come to the conclusion without any basis on the mere oral testimony of the plaintiff that the later has suffered damages. There is no reasonable ground or justification for awarding damages to the plaintiff. Therefore, I am inclined to set aside the judgment and decree made by the lower appellate court, The suit filed by the plaintiff ought to have been dismissed.

16. In the result, the appeal is allowed by setting aside the judgment and decree of the learned Subordinate Judge, Coimbatore made in A.S.No. 21 of 1982. However, there will be no order as to costs.