

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

FRIDAY, THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

CITY CIVIL COURT APPEAL NO: 394 AND 411 OF 2018

CITY CIVIL COURT APPEAL NO: 394 OF 2018 :

Appeal Under Section 96 and order 41 of CPC of C.P.C against the Judgment and Decree Dated 18.07.2018 made in OS No 132 of 2011 on the file of XXVII Additional Chief Judge, City Civil Court, Secunderabad.

Between :

K.Venkata Ram Reddy, S/o.K.Narender Reddy, Aged 43 years, Occ Business Flat No. RR/202, Second Floor, Rahul Residency Plot No.26 and 27, Sri Padmanabha Co-operative Housing Society, Sitarampur Village, Bowenpally, Secunderabad.

...Appellant/Defendant

AND

M/S.Sumithra Builders, A partnership firm having its office at Plot No.15, Maruti Arcade, Sree Lakshmi Nilayam, Maruthi Nagar, Secunderabad, rep by its Managing partner Mrs. S.V.Sumitranath, W/o.S.V.P.Nath, aged 45 years, Occ Business.

...Respondent/Plaintiff

CITY CIVIL COURT APPEAL NO: 411 OF 2018 :

Appeal Under Section 96 and order 41 of CPC of C.P.C against the Judgment and Decree Dated 18.07.2018 made in OS No.132 of 2011 on the file of XXVII Additional Chief Judge, City Civil Court, Secunderabad.

Between :

K.Venkata Ram Reddy, S/o.K.Narender Reddy, Aged 43 years, Occ Business Flat No. RR/202, Second Floor, Rahul Residency Plot No.26 and 27, Sri Padmanabha Co-operative Housing Society, Sitarampur Village, Bowenpally, Secunderabad.

...Appellant/Defendant

AND

M/S.Sumithra Builders, A partnership firm having its office at Plot No.15, Maruti Arcade, Sree Lakshmi Nilayam, Maruthi Nagar, Secunderabad, rep by its

Managing partner Mrs. S. V. Sumitranath ,W/o. S.V.P.Nath, aged 45 years, Occ
Business.

...Respondent/Plaintiff

IA NO: 1 OF 2018 :

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay of all further proceedings in pursuance of judgment and decree dated 18.07.2018 in OS No.132 of 2011 on the file of XXVII Additional Chief Judge, City Civil Court, Secunderabad pending disposal of the CCC Appeal.

Counsel for the Appellant : Sri G.Tirupathi Reddy (in both cases)

Counsel for the Respondent : Sri Dishit Bhattacharjee (in both cases)

The Court made the following : COMMON JUDGMENT

THE HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU

CCCA.NO.394 OF 2018

AND

CCCA.NO.411 OF 2018

COMMON JUDGMENT:

Being not satisfied with the findings recorded by the learned XXVII Additional Chief Judge, City Civil Court, Secunderabad in the judgment and decree dated 18-07-2018, where under, the learned trial Court passed a decree in favour of respondent/plaintiff for recovery of Rs.10,27,000/- and dismissed his counter claim, the defendant in the said suit has filed first appeal questioning the decree vide CCCA.No.394 of 2018 and filed a separate appeal vide CCCA.No.411 of 2018 against the dismissal of his counter claim. Since both the appeals are against the same judgment and as the learned counsel has submitted common arguments in both the appeals, it would be suffice to dispose both the appeals under a common judgment.

2. As could be seen from the pleadings of both parties and other record, it shows that the respondent/plaintiff

has filed the original suit vide OS.No.132 of 2011 against the present appellant for recovery of Rs.10,27,000/-. The respondent has claimed that the present appellant offered to purchase his semi-finished Flat for Rs.15,00,000/- and paid the said sale consideration in two separate amounts. The respondent/plaintiff has claimed that the present appellant paid Rs.12,50,000/- in the first instance and paid the balance after execution of the sale deed. It is also alleged in the plaint that the present appellant has entrusted the Flat to the respondent for completion of other Civil works and he agreed to pay Rs.7,00,000/- but the appellant failed to pay the amount, though the respondent could complete the additional works entrusted to him.

3. The appellant has disputed the suit claim but admitted the purchase of semi-finished Flat from respondent for Rs.15,00,000/-. He has also admitted that the contract which he has entered with the respondent for completion of works worth Rs.7,00,000/-. However, the appellant has pleaded that he has availed a loan of Rs.15,00,000/- from Syndicate Bank and out of the said amount, a sum of

Rs.9,00,000/- was released towards payment of balance sale consideration and the remaining amount of Rs.6,00,000/- was paid to the respondent towards part payment of the above referred additional work. He has also claimed that the respondent/plaintiff failed to provide generator backup, drinking water connection, transfer of electricity meter and that he could complete the pending work by spending Rs.1,16,490/-. Therefore, the appellant has sought for dismissal of the suit and prayed for a decree to recover Rs.1,16,490/- being the cost of work which he could complete.

4. The trial Court framed the following issues:

1. Whether the plaintiff is entitled for recovery of Rs.10,27,000/- with interest as prayed to?
2. Whether the defendant is entitled for Rs.1,16,490/- towards counter claim?
3. Whether the suit is bad for non-joinder of the original owner Sri Padmanabha Co-operative Housing Society Limited, Seetharampur Village, Bowenpally, Secunderabad?
4. To what relief?

5. In order to prove its claim, the respondent/plaintiff examined two witnesses as PWs.1 and 2

and marked Exs.A1 to A35 and marked Exs.X1 and X2. The appellant herein was examined as DW.1 and he has also marked Exs.B1 to B4. The trial Court having appreciated the pleadings, oral and documentary evidence adduced by both parties, held that the respondent was able to prove its claim, thereby, passed a decree in favour of the respondent while dismissing the counter claim filed by the present appellant.

6. Being not satisfied with the said finding, the appellant has filed two separate appeals on the ground that the trial Court failed to appreciate the oral and documentary evidence in a proper way. The trial Court failed to consider the admissions of PW.1 elicited during his cross-examination, there was failure on the part of trial Court in appreciating the contentions raised by the appellant, thereby, prayed for setting aside the impugned judgment and also sought for decree to recover the counter claim.

7. In view of the specific contentions raised by the parties to the suit and in view of the grounds of the appeal, the following points arose for consideration:

1. Whether the trial Court was wrong in dismissing the counter claim filed by the appellant and allowing the plea taken by the respondent and granting a decree in favour of the respondent/plaintiff?
2. Whether the trial Court failed to appreciate the oral and documentary evidence in a proper way, thereby, came to an incorrect conclusion?
3. Whether the judgment of the trial Court is sustainable?

8. As could be seen from the material averments made by the parties to the suit and their respective oral and documentary evidence, there is no dispute about the purchase of a semi-finished Flat by the present appellant from the respondent/plaintiff. There is no dispute about the contract of agreement of sale through which the appellant herein agreed to purchase the property and the execution of a sale deed through which the respondent transferred right in favour of the appellant herein. Similarly, the appellant did not dispute the contract which he entered with the respondent for undertaking certain additional works and cost of the said contract being Rs.7,00,000/-.

9. The respondent claimed that the property was alienated for a sum of Rs.15,00,000/-, and the appellant paid

only a sum of Rs.12,50,000/- before execution of the sale deed and could obtain a sale deed even without completely paying the sale consideration etc., The appellant herein has claimed that he has obtained the sale deed after payment of the entire sale consideration. Therefore, the question of his requesting the respondent to execute the sale deed without payment of the entire sale consideration does not arise. It was also the case of the appellant that out of the sanctioned loan from Syndicate Bank, he has paid Rs.9,00,000/- towards final settlement of the sale consideration and remaining amount of Rs.6,00,000/- was paid to the respondent towards the part payment of contract for construction of additional structures. However, the respondent disputed this particular plea and contended that in view of the contract between both the parties, the total sale consideration was Rs.15,00,000/- and a sum of Rs.7,00,000/- was due from the appellant herein towards the additional work. Therefore, he is entitled to Rs.22,00,000/-, whereas the appellant has paid Rs.15,00,000/-, thereby, there was an outstanding amount of Rs.7,00,000/-.

10. It is true, the appellant herein has contended that though he could obtain a loan for Rs.15,00,000/-, he has paid only Rs.9,00,000/- from the said loan amount to the respondent herein towards the final settlement as the remaining amount was paid at the time of agreement. Therefore, the subsequent payment of Rs.6,00,000/- as admitted by PW.1 was towards the payment of additional works. It is true, the evidence placed before the Court indicates that the respondent admitted the receipt of Rs.6,00,000/- in three installments and the said payments were after the execution of the sale deed.

11. The appellant herein was examined as DW.1. During his evidence, the learned counsel for the respondent enquired the defendant as to whether he has filed any proof about the payment of the total sale consideration and payment of Rs.7,00,000/- towards the cost of additional work and DW.1 has admitted that he did not file a separate proof about the payment of Rs.7,00,000/- but claimed that out of the said Rs.7,00,000/-, he has paid Rs.6,00,000/- from the Bank loan.

12. The record placed before the Court indicates that when the respondent/plaintiff got issued a legal notice demanding the payment of Rs.7,00,000/- on the ground that the appellant failed to pay the cost of additional works, the appellant herein got issued a reply vide Ex.B1. Ex.X1 is the copy of agreement of sale, whereas, Ex.A1 is the copy of sale deed dated 29-08-2008. According to the averments in Ex.X1, there was an agreement between the appellant and the respondent for purchase of an unfinished Flat for a sum of Rs.15,00,000/- and there is a specific averment in the agreement that the appellant herein paid Rs.2,00,000/- and there was an outstanding amount of Rs.13,00,000/- which he shall pay at the time of registration of the Flat. Whereas, according to Ex.A1 sale deed, it is mentioned as if, the property was purchased for Rs.12,50,000/- and that the appellant has paid Rs.3,50,000/- prior to the registration and an amount of Rs.9,00,000/- was paid through Bankers cheque from Syndicate Bank. It is the specific contention of the appellant that he has applied a loan for purchasing the Flat and a sum of Rs.15,00,000/- was sanctioned. However, he

claimed that he paid Rs.9,00,000/- towards final settlement of the property. He did not explain as to what is the exact price nor there is any explanation from the appellant as to how the sale consideration was reduced from Rs.15,00,000/- as mentioned in Ex.X1 to Rs.12,50,000/- as stated in Ex.A1 sale deed. The appellant himself has admitted before the Court that he did not file proof for payment of Rs.7,00,000/- but claimed that the amount of Rs.6,00,000/- which he paid through the Bank transaction was towards the cost of additional work. Had it been the truth, there was no reason for the appellant in not obtaining any proof in the form of a receipt or acknowledgment towards the payment of Rs.6,00,000/-. Even if the contention of the appellant is taken into consideration, he said to have purchased the property for Rs.15,00,000/- as evident from Ex.X1 but he tried to claim that he paid Rs.12,50,000/- as on the date of sale deed, he did not explain as to when he paid the balance consideration.

13. In the light of his own admission that he purchased the property for Rs.15,00,000/- and in view of the

recital of Ex.A1 that only a sum of Rs.12,50,000/- was paid, the contention of appellant that he paid the balance amount of loan towards the cost of additional constructions cannot be accepted. As rightly held by the trial Court, absolutely, there is no proof that the appellant herein paid Rs.22,00,000/- i.e., Rs.15,00,000/- towards the cost of the semi-finished Flat and Rs.7,00,000/- towards the additional works. Therefore, the trial Court rightly appreciated the oral and documentary evidence and came to a correct conclusion that the appellant failed to prove that he paid the cost of additional work in spite of his admission that he has entrusted the Flat to the respondent on the date of Ex.A1 itself and the work was completed.

14. There is another discrepancy in the contention raised by the appellant. According to his own statement filed before the trial Court, he tried to claim that he spent Rs.2,00,000/- for completion of the work, whereas, he filed a counter claim for Rs.1,16,490/-. He did not examine any other witness to prove that he could get the additional work completed by spending the above amount. Therefore,

absolutely, there are no reasons to grant counter claim or to dismiss the suit. Therefore, both the appeals are liable to be dismissed.

15. In the result, both the appeals are dismissed.

Consequently, Miscellaneous applications if any, are closed. No costs.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The XXVII Additional Chief Judge, City Civil Court, Secunderabad.
2. One CC to Sri G.Tirupathi Reddy, Advocate [OPUC]
3. One CC to Sri Dishit Bhattacharjee, Advocate [OPUC]
4. Two CD Copies

Svs/gh

PS

HIGH COURT

DATED:28/06/2024

COMMON JUDGMENT

CCCA.No.394 AND 411of 2018

DISMISSING BOTH
THE APPEALS

6 copies
for
A/10/24