

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2015

CORAM

THE HONOURABLE MR. **JUSTICE G.CHOCKALINGAM**

Civil Suit No.548 of 2009

Panchu Valliappan ... Plaintiff

Vs.

V.R.Subramanian Defendant

The suit has been filed under Order IV Rule 1 of O.S.Rules read with Order 7 Rule 1 of C.P.C., praying for a judgment and decree against the defendant [a] to pay to the plaintiff a sum of Rs.140 lakhs (Rupees One hundred and Forty lakhs only) being value of plots wrongfully sold or retained by the defendant with interest at 18% per annum from the date of plaint till realisation; [b] to pay to the plaintiff a sum of Rs.10 Lakhs (Rupees Ten Lakhs only) towards breach of contract and [c] directing the defendant to pay the cost of the suit to the plaintiff.

For Plaintiff : Mr.N.Nisar Ahamed

For defendant : No appearance
[Defendant set ex-parte
on 21.07.2014]

- - - - -

JUDGMENT

<https://hcservices.ecourts.gov.in/hcservices/> The suit has been filed by the plaintiff praying for

a judgment and decree directing the defendant to pay to the plaintiff a sum of Rs.140 lakhs (Rupees One hundred and Forty lakhs only) being value of plots wrongfully sold or retained by the defendant with interest at 18% per annum from the date of plaint till realisation and further directing the defendant to pay to the plaintiff a sum of Rs.10 Lakhs (Rupees Ten Lakhs only) towards breach of contract and also directing the defendant to pay the costs of the suit to the plaintiff.

2. The case of the plaintiff, as stated in the plaint, is as follows:-

[i] The defendant is the family friend of the plaintiff and the defendant suggested the plaintiff that a lay out business could be done as it is not risky but at the same time more profitable and saying so, the defendant induced the plaintiff to part with funds for the said business and bona fide believing the defendant's representations to be true and honest, the plaintiff invested money nearly to the tune of Rs.15,00,000/- in the year 1999. Using the plaintiff's money, the defendant has purchased 12.54 hectares (30.98 acres) of land and made a lay out called Vignaswara Nagar consisting of 364 plots at Eriyamangalam Village, Tiruvallur Taluk & District and the said lay out was got approved on 12.05.1999 by

shop sites, one school site and one community hall site. As per the understanding, the defendant allotted 97 plots proportionate to the plaintiff's investment for the lay out business and accordingly handed over possession and enjoyment of 97 plots declaring that the plaintiff is an absolute and exclusive owner and the defendant has no right, title or interest in respect of the said 97 plots, and in that spirit favouring the plaintiff, the defendant executed and registered power deeds dated 16.02.2001 under Ex.P.1, 26.09.2001 under Ex.P.2 and 17.05.2002 under Ex.P.3. Confirming the plaintiff's investment and allotment of plots, an agreement dated 27.09.2001 was entered into between the defendant and the plaintiff and the certified copy of the said agreement was marked as Ex.P.4.

[ii] The plaintiff has further stated in the plaint that on 23.12.2006, the plaintiff inspected the plots allotted to her with a view to sell the same. But to her shock and dismay, she came to understand that already, from March 2006, the defendant has started selling her plots for his illegal personal gains causing illegal loss to the plaintiff and that initially the plaintiff came to know that the defendant has sold 52 plots measuring an extent of 1,27,640/- Sq. Ft. and later, she came to know that the defendant has sold her another 10 plots bearing Nos. and

extent in Sq. Ft. respectively are : 84-2200, 85, 86, 110, 124, 284, 2400, 247-900, 357-3600, School plot 13480, Community Hall-4800 in all 36980 Sq. Ft. in all 62 plots admeasuring totally 1,64,620 Sq. Ft, in which the defendant has no right, title or interest. When the plaintiff contacted the defendant and questioned him, the defendant admitting the breach of trust pleaded guilty and offered to compensate the plaintiff by allotment of alternate plots numbering 49 and he has also voluntarily issued a letter of promise cum agreement dated 18.03.2007 which is marked as Ex.P.5. It is further stated that without the knowledge and consent of the plaintiff, the defendant has sold not only the plaintiff's plots mentioned in the agreement dated 27.09.2001 but also the plots mentioned in the promise cum agreement letter dated 18.03.2007 causing huge monetary loss, mental agony and torture to the plaintiff. The defendant has sold almost all plaintiff's plots except very few and as it would be difficult for the plaintiff to repossess the plots from purchasers to whom the defendant had illegally sold, the plaintiff has decided to recover the value of the said 62 plots from the defendant apart from claiming damages from the defendant. Therefore, the plaintiff had preferred a complaint to the police against the defendant for cheating, criminal breach of trust and criminal misappropriation etc., After due investigation,

the police has filed a criminal case in C.C.No.9358 of 2008 in Crime No.198 of 2008 on the file of the learned XI Metropolitan Magistrate, Chennai at Saidapet and the same is under trial. The plaintiff estimated the monetary loss to the tune of Rs.140 lakhs [Government guide line value at present is Rs.25 per Sq. Ft., but Market value is more than Rs.85 per Sq. Ft., (Rs.2,04,000/- per ground measuring 2400 Sq. Ft.) $1,64,620 \text{ Sq. Ft.} \times 85 = \text{Rs.1,39,92,700 Sq. ft}$ (rounded off to Rs.140 lakhs)] and estimated the damages to the tune of Rs.10,00,000/- (Rupees Ten Lakhs only).

[iii] The further allegation made by the plaintiff is that the defendant has committed great injustice and caused huge loss and put her to irreparable loss and hardship. The plaintiff understands that in the defendant's native place at Rangiyam village, the defendant has constructed a house worth more than 20 lakhs; purchased a plot at Pudukottai Town and performed Boomi Pooja therein for constructing a marriage hall; purchased 4 Acres of land near Trichy Airport for the purpose of lay out and purchased lands at Arakonam and Cheyyar for lay out and also purchased two brand new costly cars by depriving the plaintiff. The plaintiff issued a legal notice dated 28.07.2008 under Ex.P.6 through her counsel to the defendant. The defendant has received the said notice on 30.07.2008 and through his

counsel, the defendant has sent a reply dated 05.08.2008

under Ex.P.7. The plaintiff's counsel sent a rejoinder dated 14.08.2008 under Ex.P.8 to the defendant's counsel and the same was received by his counsel on 16.08.2008 under Ex.P.9. But till date, the defendant has neither transferred 62 plots nor paid Rs.140 lakhs being the present day market value of the said 62 plots and has also failed to pay the sum of Rs.10 Lakhs (Rupees Ten Lakhs only) by way of damage for breach of contract and compensation for loss and injury sustained by the plaintiff.

[iv] In the plaint, it is further alleged by the plaintiff that the total extent of 62 plots allotted to the plaintiff and sold by the defendant is 3.81 acres (164620 sq. ft) and prevailing market rate of the land is Rs.85 per Sq. Ft. Therefore, the plaintiff is entitled to recover a sum of Rs.1,40,00,000/- from the defendant towards the value of the lands which was wrongly sold or retained by the defendant. The conduct of the defendant was illegal and dishonest that caused untold misery and mental agony to the plaintiff and her husband. The plaintiff's husband was bed ridden after a heart attack caused by the breach of trust on the part of the defendant. Therefore, the defendant is liable to compensate the plaintiff for mental agony and physical suffering caused to her and her husband.

The plaintiff valued the damages suffered due to breach of

contract on the part of the defendant at Rs.10,00,000/-. The defendant is, therefore, liable to pay the total sum of Rs.1,50,00,000/- to the plaintiff.

[v] The plaintiff is entitled for a sum of Rs.140 lakhs (Rupees One hundred and Forty Lakhs only) being value of plots wrongfully sold or retained by the defendant with interest at 18% per annum from the date of plaint till realisation and a sum of Rs.10 lakhs (Rupees Ten Lakhs only) towards breach of contract and also the costs of the suit. Hence, the plaintiff has filed this suit for the aforesaid relief.

3. Though summons were already served on the defendant, he has not chosen to enter appearance either in person or through any counsel and he has also not chosen to file his written statement. Hence, the sole defendant was set ex-parte by this Court on 21.07.2014.

4. Thereafter, the case was posted before the learned Additional Master No.II, for recording ex-parte evidence. The plaintiff examined herself as P.W.1 and marked Exs.P1 to P9 to substantiate her case as stated in the plaint.

5. Heard, Mr.N.Nisar Ahamed, learned counsel for the plaintiff. The defendant was set ex-parte by this Court on 21.07.2014.

6. On the side of the plaintiff, the learned counsel would contend that since the defendant is the family friend

of the plaintiff, believing the representations made by the defendant, the plaintiff had invested money nearly to the tune of Rs.15,00,000/- in the year 1999 and by using the plaintiff's money, the defendant has purchased 12.54 hectares (30.98 acres) of land and made a lay out called Vignaswara Nagar consisting of 364 plots at Eriyamangalam Village, Tiruvallur Taluk & District and the said lay out was got approved on 12.05.1999 by D.C.T.P.No.157/99 consisting of 357 house sites, 5 shop sites, one school site and one community hall site. Further, it was contended that as per the understanding, the defendant allotted 97 plots proportionate to the plaintiff's investment for the lay out business. Further, it was contended that the defendant accordingly handed over possession and enjoyment of 97 plots declaring that the plaintiff is an absolute and exclusive owner and the defendant has no right, title or interest in respect of the said 97 plots, and the defendant has also executed power deeds dated 16.02.2001 under Ex.P.1, 26.09.2001 under Ex.P.2 and 17.05.2002 under Ex.P.3. Confirming the plaintiff's investment and allotment of plots, an agreement dated 27.09.2001 was entered into between the defendant and the plaintiff and the certified copy of the said agreement was marked as Ex.P.4. Even though the power of attorney was executed in favour of the plaintiff by the defendant, the defendant

sold the property of the plaintiff. The defendant, for his illegal personal gain, sold the property allotted to the plaintiff. When it was questioned by the plaintiff, the defendant admitted the breach of trust and pleaded guilty and offered to compensate the plaintiff by allotment of alternate plots numbering 49 and the defendant also has voluntarily issued a letter of promise cum agreement dated 18.03.2007 which is marked as Ex.P.5.

7. It is also contended that without the knowledge and consent of the plaintiff, the defendant has sold not only the plaintiff's plots mentioned in the agreement dated 27.09.2001 but also the plots mentioned in the promise cum agreement letter dated 18.03.2007. Therefore, the plaintiff had preferred a criminal complaint to the police against the defendant for cheating, criminal breach of trust and criminal misappropriation etc., and the police has filed a criminal case in C.C.No.9358 of 2008 in Crime No.198 of 2008 on the file of the learned XI Metropolitan Magistrate, Chennai at Saidapet, Chennai. The plots allotted is more than 1,64,620 Sq. Ft. Further, it is contended that the defendant is liable to pay a sum of Rs.85/- per sq. ft. for 1,64,620 Sq. Ft. [1,64,620 Sq. Ft. x 85 = Rs.1,39,92,700 Sq. ft (rounded off to Rs.140 lakhs)]. The damages was estimated to the tune of Rs.10,00,000/- (Rupees Ten Lakhs only). Totally,

Rs.1,49,92,700/-. For the legal notice-Ex.P.6 issued to the defendant, the defendant is evasive reply, for which, the plaintiff sent a rejoinder dated 14.08.2008. The learned counsel for the plaintiff contended that the suit may be decreed as prayed for.

8. In this case, the defendant has not admitted the claim of the plaintiff in the reply notice. In view of the above facts and circumstances of the case, the plaintiff has to prove his case by adducing oral and documentary evidence. Regarding the agreement between the parties, it is proved by the evidence of P.W.1 and the documents produced on the side of the plaintiff viz., Exs.P.1 to P.5. The plaintiff claimed a sum of Rs.10 lakhs towards damages. The plaintiff is entitled for the damages as prayed for in the plaint.

9. The learned counsel for the plaintiff further contended that the plaintiff is entitled to Rs.85/- per sq. ft., for the total area of plots allotted to her and as per the agreement, the damages were calculated as stated above. It is further admitted on the side of the plaintiff that during the relevant point of time, the guideline value for the property is only at the rate of Rs.25/- per sq. ft., and there is no evidence adduced on the side of the plaintiff to prove the market value at the rate of Rs.85/-

per sq. ft., during the relevant point of time. When this

suit came up for hearing on 10.09.2015, time was given to the plaintiff to establish the market value at the rate of Rs.85/- per sq. ft. In spite of sufficient time was given, no document was produced on the side of the plaintiff and hence, arguments were heard and the case was reserved on 15.10.2015 for judgment. Since the plaintiff has not adduced any oral or documentary evidence and failed to prove the market value of the property at the rate of Rs.85 per sq. ft. during the relevant period, the plaintiff is entitled only the guideline value of Rs.25/- per sq. ft., for the above mentioned area i.e., 1,64,620 sq. ft. Further, the plaintiff is entitled to Rs.10,00,000/- towards damages. Therefore, the plaintiff is entitled to [Rs.1,64,620 x 25 = 41,15,500/- + Rs.10,00,000/- = Rs.51,15,500/-] Rs.51,15,500/- alone from the defendant for the suit claim along with proportionate costs and interest at the rate of 18% per annum from the date of plaint till the date of realization.

10. Accordingly, the suit is decreed for **Rs.51,15,500/-** along with proportionate costs and interest at the rate of 18% per annum from the date of plaint till the date of realization.

Plaintiff side Exhibits

Ex. P.1 - Dated 16.02.2001-The certified copy of the power of attorney

Ex. P.2 - Dated 26.09.2001-The certified copy of the power of attorney

- Ex. P.3 - Dated 17.05.2002-The certified copy of the
power of attorney
- Ex. P.4 - Dated 27.09.2001-The certified copy of the
agreement
- Ex. P.5 - Dated 18.03.2007-The certified copy of the
promise cum agreement
- Ex. P.6 - Dated 28.07.2008-The copy of the legal notice
- Ex. P.7 - Dated 05.08.2003-The original reply
- Ex. P.8 - Dated 14.08.2008-The office copy of rejoinder
- Ex. P.9 - The proof of service for Exs.P.8 and P.9.

Plaintiff side witness:

P.W.1 - Panchu Valliappan

Defendant side exhibits:

Nil

Defendant side witness:

Nil

sd/.G.C.J
27.10.2015

//Certified to be a true copy//

Dated this the day of 2016

R.s/19.01.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of
the Order/Judgment Decree in this format.