IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2015

CORAM

THE HONOURABLE **Mrs. JUSTICE. S.VIMALA**

Civil Suit No.768 of 2010

Mark Pillai, Represented by his Power of Attorney,
Mrs. Maria Pauly Pillai, W/o.Mark Pillai,
Residing at: K-3, Shivani Apartments,
Block No.2, No.40 East Coast Road,
Chennai - 600 041 ... Plaintiff

Vs.

1. Indian Bank, ARMB-II,
   Represented by its: Assistant General Manager,
   No.55 Ethiraj Salai, Chennai - 600 008
2. Manohar Prasad, Proprietor,
   M/s. Asian Capital Consolidated Fund,
   No.2, Sarangapani Street, T.Nagar,
   Chennai - 600 017
3. J.D.A.Consultancy Services Pvt. Ltd.,
   Represented by its Managing Director,
   I Floor, Casa Blanks Complex,
   Casa Major Road, Egmore,
   Chennai - 600 008
4. Adhimoolam
5. Kannammal
6. Muniammal
7. Padmavathy
8. Iyyakannu
9. Navaneetha Ammal
10. Baby Ammal
11. Subramani
12. Saroja Ammal
13. Ramesh
14. Muruvan @ Murugappa Naicker
15. A.Gangadurai Naicker
16. Murugesa Naicker
17. Kuppusamy Naicker
18. Subramaniya Naicker
19. Elumalai Naicker

(D-4 to D-19 represented by their
Power of Attorney Agent, P.L.Sundaram,
Proprietor of Palaniappa Estates,
No.22/77, Venkatarathinam Nagar,
Adyar, Chennai - 600 020)

20. M/s.Ravishankar Industries (P) Ltd.,
(Formerly known as Ravishankar Films (P) Ltd.,)
No.2, Sarangapani Street, T.Nagar,
Chennai - 600 017
21. Manohar Prasad
22. M/s.Asian Capital Consolidates & Holdings Pvt. Ltd.,
No.2, Sarangapani Street, T.Nagar,
Chennai - 600 017
23. Prakrithi Foundation Ltd.,
Rep. By its Director, Mr. M.Rozario,
Regd. Office at New No.12, Old No.50,
V.C.Garden 1st Street, Mandaveli,
Chennai - 600 028
24. M/s. Sundaram BNP PARIBAS Home Finance Ltd.,
Rep. By its General Manager,
Regd. Office at No.21, Pattullas Road,
Chennai - 600 002
25. Palaniappa Estates, Rep. By its Proprietor,
P.L.Sundaram, 22/77 Venkatarathinam Nagar,
Adyar, Chennai - 600 020
26. M.Gopalakrishnan, Former Chairman & Managing Director,

Indian Bank, Old No.11, New No.5,
III Main Road, Nehru Nagar, Adyar,
Chennai 600 020 ... Defendants

Civil Suit filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure, 1908, praying for judgment and decree against the defendants as under:

(a) For a declaration that the plaintiff is not bound by the proceedings created by M/s.Ravishankar Industries Private Limited, the 20th defendant and the first defendant Bank in respect of the plaint schedule property in O.A.No.375 of 1997 on the file of the DRT-I, Chennai, as he is a bonafide purchaser of the suit property or for any reasons, if this Hon'ble Court holds that the plaintiff is not the bona fide purchaser, direct the defendants 4 to 19 and 23, 25 and 26 to pay such sum that may be due and payable in respect of the plot purchased by the plaintiff covered by the Debts Recovery proceedings initiated as against the borrowers and the guarantors by the first defendant and the properties covered therein and direct the first defendant to clear the encumbrance by executing a deed of disclaimer over the plaint schedule property.

(b) For a declaration that the purported compromise order, dated 21.11.2000, passed in O.A.No.375 of 1997, as merged with DRC No.187 of 2001 on the file of the Debts Recovery Tribunal, Chennai, is illegal, invalid and non-est in the eye of law and consequently not binding upon the plaintiff and his property morefully desccribed in the plaint schedule hereunder.

(c) For a declaration that the sale certificate issued in favour of the third defendant by the Recovery Officer, Debts Recovery Tribunal-I, Chennai, pursuant to DRC No.187 of 2001 dated 03.01.2007, is illegal, invalid and non-est in the eye of law and not binding upon the plaintiff and his property.

(d) For a permanent injunction restraining the first and third defendants or any one claiming through them from enforcing the rights derived pursuant to the sale certificate, dated 03.01.2007, issued subsequent to the purported compromise, dated 21.11.2000 as merged with DRC No.187 of 2001 on the file of the Debts Recovery Tribunal-I, Chennai, as against the plaintiff or the suit property morefully descibred in the plaint schedule hereunder.

(e) grant such other reliefs and

(f) for the costs of the suit.

Schedule

All that piece and parcel of land bearing Plot No.55, an extent of 2200 sq.ft., and Plot No.56, an extent of 2200 sq.ft., in the layout of house-sites (approved in PPD/LO No.73/91) now known as Rajiv Garden, comprised in Survey No.428/3 and Survey No.428 covered Patta No.332, Okkium Thoraipakkam Village, Tambaram Taluk, Kancheepuram District, and the said plots being boundaries and measurements as follows:

Boundaries and measurement for Plot No.55:

North by	:	30 feet Road,
South by	:	Plot No.61,
East by	:	Plot No.54,
West by	:	Plot No.56

Boundaries and measurements for Plot No.56:

North by	:	30 feet Road,
South by	:	Plot No.60
East by	:	Plot No.55,
West by	:	Plot No.57.

For Plaintiff : Mr. R.Thiagarajan

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JUDGMENT

The suit is filed for: (a) a declaration that the plaintiff is not bound by the proceedings initiated by M/s.Ravishankar Industries Private Limited (20th defendant) and the first defendant (Bank) in respect of the plaint schedule property in O.A.No.375 of 1997 or in the event of the Court holding that the plaintiff is not a bona fide purchaser, to direct defendants 4 to 19, 23, 25 and 26 (respondents 4 to 19, 23, 25 and 26) to pay such sum that may be due and payable in respect of the plot purchased by the plaintiff covered by the Debts Recovery Proceedings initiated as against the borrowers and guarantors by the first defendant and the properties covered therein and direct the first respondent to clear the encumbrance by executing a deed of disclaimer over the plaint schedule property; (b) a declaration that the purported compromise order, dated 21.11.2000, passed in O.A.No.375 of 1997, as merged with DRC No.187 of 2001 on the file of the Debts Recovery Tribunal, Chennai, is illegal, invalid and non-est in the eye of law and consequently not binding upon the plaintiff; (c) a declaration that the sale certificate issued in favour of the third defendant by the Recovery Officer, Debts Recovery Tribunal-I, Chennai, pursuant to DRC No.187 of 2001, dated 03.01.2007, is illegal, invalid and non-est in the eye of law and not binding upon the plaintiff and his property; (d) a permanent injunction restraining the first and third defendants from enforcing the rights derived pursuant to the sale certificate, dated 03.01.2007, issued subsequent to the purported compromise, dated 21.11.2000 as merged DRC No.187 of 2001 on the file of the Debts Recovery Tribunal-I, Chennai, as against the plaintiff or the suit property.

2. The brief averments in the plaint are as follows:-

The plaintiff purchased the suit property, by virtue of the sale deed, dated 17.02.2006, from M/s.Prakrithi Foundations Limited (D-23) for a sale consideration of Rs.9,24,000/-. The plaintiff availed financial assistance from the 24th defendant. The suit property, along with other properties, were purchased by the vendor of the plaintiff, from defendants 4 to 19. Defendants 4 to 19 had an agreement for sale with M/s.Palaniappa Estates (D-25) and defendants 4 to 19 gave a power of attorney in favour of Palaniappa Estates (D-25). D-25 applied for approval of plotting out the property into convenient house-sites and also obtained approval.

2.1. The plaintiff also paid a sum of Rs.30,76,000/- towards additional expenditure for the development of the suit property.

2.2. Towards mobilizing money for the purchase of the property, the plaintiff created a valid mortgage in favour of the M/s.Sundaram BNP Paribas Home Finance Limited (D-24) and the plaintiff availed a loan of Rs.23,76,000/- from D-24 for the purchase and development of the property. The loan is repayable with interest at 8.75% per annum and the amount is repayable in 120 monthly instalments. The plaintiff has been exercising his right of ownership over the suit property, i.e., Plot Nos.55 and 56, without any let or hindrance.

2.2. The plaintiff was not aware of the initiation of legal proceedings by the first defendant as against D-20. D-20 had borrowed loan from the Indian Bank, T.Nagar Branch, Chennai, and did not repay the amount to the Bank and therefore, the Bank initiated recovery proceedings in O.A.No.375 of 1997 for the recovery of a sum of Rs.59,33,67,968.42 with future interest at 20.75% per annum. In the proceedings before the Debts Recovery Tribunal, a compromise was entered into between the Indian Bank and the defendants, without reference to the guarantors and without reference to the property situated at Okkium Thuraipakkam and also without reference to the rights of third parties, who have acquired the property bonafide from defendants 4 to 19 and 23 / 25. There had been a collusion between the first defendant and the principal borrower, M/s.Ravi Shankar Industries Private Limited (D-20). The Bank agreed for the OTS proposal submitted by the Principal Borrower.

2.4. The properties situated at Okkium Thuraipakkam, Tambram Taluk, which were promoted and developed by D-25, M/s.Palaniappa Estates, Represented by its proprietor, P.L.Sundaram, was shown as Item No.23 and valued at Rs.115 lakhs. D-20, M/s.Ravi Shankar Industries agreed to pay Rs.113 lakhs, as per the Memorandum of compromise. It was agreed in the Memorandum of Compromise that the Recovery Certificate shall be binding on the parties, who signed the compromise memo and the proceedings shall be continued as against other defendants and DRC No.87 of 2001 issued on 09.12.2001 by the Presiding Officer, Debts Recovery Tribunal, Chennai, is illegal, invalid and non-est in the eye of law.

2.5. M/s.J.D.A.Consultancy Services Private Limited purported to have paid a sum of Rs.23,05,00,000/- and they have been declared as the purchaser in auction on 29.11.2000 and the sale was made absolute on 03.01.2007.

2.6. There had been collusion and connivance between the borrower, guarantor and the Bank, by which unmindful of the consequences of the innocent third party purchasers, who have purchased the property from M/s.Palaniappa Estates Private Limited (D-25) were sought to be made liable on behalf of the Principal Borrower on the strength of the purported memorandum of compromise brought on 21.11.2000.

2.7. The alienees, who have purchased the properties from the original owners, ought to have been made as parties to the proceedings and they ought to have been prevented from creating further encumbrances over the properties forming the subject matter of the Debts Recovery Tribunal Proceedings. The first defendant ought to have taken steps to restrain the principal borrower as well as others from encumbering or alienating or dealing with the property, which the first defendant failed to do so.

2.8. The plaintiff is the bona fide purchaser for value and he has availed loan from D-24 and has been repaying at the rate of Rs.29,778/- every month to D-24. D-23, when selling the property, did not inform the plaintiff about the purported claim of the first defendant as against M/s.Ravi Shankar Industries Private Limited or about the collusive compromise brought about by the first defendant and M/s.Ravi Shankar Industries Private Limited and defendants 4 to 19 and 25. Had the plaintiff known about the claim or charge over the property, he would not have ventured to purchase the property from D-23.

2.9. There had been a collusive sale between D-1 and D-3 and D-3 subsequently opted to get back the payment and thereafter the claim of the Bank is alleged to have been settled by M/s.Ravi Shankar Industries Private Limited. The compromise decree is not signed by defendants 4 to 19. The compromise will bind only the signatories to the compromise and not those who have been not signed it. The plaintiff's vendor or his predecessors-in-title have not signed the compromise, dated 21.11.2000. The principal borrower (M/s.Ravi Shankar Industries Private Limited) has offered the properties belonging to D-4 to D-19 represented by their Power Agent, M/s.Palaniappa Estates, without any valid authority to bind the Principal Borrower or his properties, which were developed by M/s.Palaniappa Estates and dealt with in favour of various third party purchasers.

2.10. When the properties have been developed by D-4 to

D-19 it is not known as to how D-20 can offer the properties, as security, for the due discharge of the amount due under the Recovery Certificate issued in O.A.No.375 of 1997. The entire transaction is vitiated by fraud and deceit. The action of the first defendant / Bank as well as the Principal Borrower, M/s.Ravi Shankar Industries Private Limited and others are tainted with immoralities and illegalities and hence, the plaintiff is obliged to file the suit for declaration that the purported compromise signed between the first defendant, M/s.Ravi Shankar Industries Private Limited and M/s.Asian Capital Consolidated Fund is illegal, invalid and non-est in the eye of law and it is not binding the plaintiff. The first defendant is not entitled to fall back on the fraudulent compromise and the Bank cannot proceed against the properties belonging to the plaintiff, which is one of the items of properties covered in DRC, issued by the Recovery Officer of the Debts Recovery Tribunal, Chennai. Hence, the suit for declaration.

3. The plaintiff's wife has been examined as P.W.1 and Exs.P-1 to P-26 have been marked, in support of the claim of the plaintiff.

4. The defendants, though large in number, did not choose to contest the proceedings. When there are serious allegations of fraud and collusion, it is for the

defendants to seriously contest the proceedings if the allegations are not true. Strangely, the defendants remain exparte. Therefore, the inference is that the defendants have no case to contest and the case of the plaintiff must be true. To ascertain whether the case of the plaintiff is true, it is necessary to look into the pleadings and evidence.

5. The case of the plaintiff is that the plaintiff is a bona fide purchaser for value, who has purchased two plots in Plot Nos.55 and 56, known as Rajiv Garden, Okkium Thuraipakkam, Kancheepuram District, for a valuable consideration by the sale deed, dated 17.02.2006. Before purchasing the property, the plaintiff, as a bona fide purchaser, has applied for Encumbrance Certificate under Ex.P-5 and has ascertained whether there is any encumbrance or not. According to the plaintiff, the Encumbrance Certificate did not show any encumbrance over the suit property.

6. The learned counsel for the plaintiff relied upon the judgment of the Hon'ble Supreme Court reported in **1994 (1) SCC 1 (S.P.Chengalvaraya Naidu (Dead) by LRs v. Jagannath (Dead) by LRs and others)** wherein it has been held that the judgment or decree obtained by fraud is to be treated as nullity and it can be questioned even in collateral proceedings.

6.1. Yet another decision relied upon by the learned

counsel for the plaintiff is the one reported in **2008 (1)**

CTC 471 (S.V.Subramaniam v. Cypress Semiconductor Technology India Private Ltd., and others) wherein, it has been held that the suit filed to declare that the order passed by Debts Recovery Tribunal, Chennai, in respect of the plaintiff's property is nullified and not binding the plaintiff is maintainable.

6.2. Contending that the suit by a person who is not a party, in the DRT proceedings is maintainable before the Civil Court, the decision reported in **(2015) 1 MLJ 170 (K.Deenadayalan v. N.Sathish Kumar)** is relied upon, wherein it has been held as follows:-

> "When allegations of fraud, misrepresentation and mala-fide made by the plaintiff, with allegation of not following due procedures, Civil Court can entertain suit by person not even party in DRT proceedings. Suit not barred. Since plaintiff also sought injunction and partition, reliefs have to be adjudicated only by Civil Court. Trial Court rightly rejected application for rejection of plaint. Petition dismissed".

7. The plaintiff's vendor, Prakruthi Foundations, had obtained a sale deed under Ex.P-3 from Mr.P.L.Sundaram, Proprietor of M/s.Palaniappa Estates. Thus, the plaintiff's vendor's title has also been proved before the Court.

8. M/s.Ravi Shankar Industries Private Limited (D-20) and others appear to have borrowed certain amount from Indian Bank, T.Nagar Branch, Chennai, and did not repay the amount. Certain proceedings were initiated under the provisions of RDDBI Act, in O.A.No.375 of 1997 and subsequently, M/s.Ravi Shankar Industries Private Limited entered into an OTS proposal with the Bank and purported to have reached a compromise, which is assailed as fraudulent. In the compromise, the property belonging to the plaintiff has been offered as security. D-4 to D-19 had executed a power of attorney in favour of M/s.Palaniappa Estates, Rep. By its Proprietor, Mr.P.L.Sundaram, and it appears that there had been collusion between M/s.Ravi Shankar Industries Private Limited, M/s.Palaniappa Estates and Indian Bank, and the compromise had been between D-1 to D-3 and D-20 to D-22, in which an encumbrance has been created over the property. The documents and memorandum of compromise brought about by the borrowers and the guarantors ignoring defendants 4 to 19 and the plaintiff would demonstrate the collusive action between the first defendant and D-26 in connivance with D-20. It is vehemently contended by the learned counsel for the plaintiff that D-4 to D-19 have not signed in the compromise memo. Therefore, the compromise, dated 21.11.2000, which ultimately culminated in issuance of DRC No.187 of 2001 is illegal, invalid and non-est in the eye

of law. Hence, as contended by the plaintiff, it is not binding upon the plaintiff.

9. It is pointed out by the learned counsel for the plaintiff that even though the Power of Attorney of D-14 and D-15 are stated to have signed in the compromise memo (Ex.P-10), the Power of Attorney in favour of D-14 and D-15 did not authorize them to sign in the compromise memo and therefore, the signing in the compromise memo, by D-14 and D-15 is not valid and it would amount to not signing in the compromise memo.

9.1. These contentions remain unchallenged. Therefore, this Court cannot disregard that contention. Inasmuch as there is no authority to sign in the compromise memo through the Power of Attorney, it is claimed that the compromise memo will not bind the predecessor-in-title, i.e., namely D-4 to D-19 and the title holder / the plaintiff.

10. Therefore, in respect of the suit property in question, the plaintiff is entitled to the relief of declaration that the plaintiff is not bound by the proceedings created by M/s.Ravishankar Industries Private Limited, the 20th defendant and the first defendant-Bank in respect of the plaint schedule property in O.A.No.375 of 1997 on the file of the DRT-I, Chennai.

10.1. The plaintiff is also entitled to the declaration that the compromise order, dated 21.11.2000, in O.A.No.375 of 1997, is also not binding upon the plaintiff. Consequently, it is declared that the Sale Certificate issued in favour of the third defendant by the Recovery Officer, Debts Recovery Tribunal, Chennai, pursuant to DRC No.187 of 2001, dated 03.01.2007 is also not binding upon the plaintiff and his property.

11. In the result, the Civil Suit is decreed as prayed for with costs.

sd/.S.V.J
03.02.2015

//Certified to be a true copy//
Dated this the day of 2015.

R.s/16.04.2015 COURT OFFICER
From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.