

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

C.S.NO.425 OF 2015
AND O.A.NO.550 OF 2015

M/s.Salma Construction Pvt. Ltd.,
Represented by its Managing Director
D.N.Hassan Abdul Cader
S/o. A.M.S. Dawood Naina
18, West Avenue Road,
Kodambakkam, Chennai - 24. ... Plaintiff

Vs.

1.P.Saroja Ammal
2.J.Vetriveeran
3.J.Jayaveeran
4.J.Pandurangan
5.J.Mathivanan
6.J.Gopalakrishnan ... Defendants

PRAYER: Plaint filed under Order VII Rule I of CPC read with Order IV Rule 1 of Original Side Rules praying for the following judgment and decree in favour of the plaintiff:

a) To direct the defendants 1 to 6 specifically perform their part of the obligations of the Memorandum of Agreement dated 01.03.2014 by executing and registering the Joint Venture Agreement and Power of Attorney in

respect of the suit property and register the same on a date to be fixed by this Court and in default direct the Court to execute and register the Joint Venture Agreement and Power of Attorney in respect of the Plaint Schedule property in favour of the plaintiff at the expense of the plaintiff or in the alternative direct the refund of the advance amount of Rs.2,61,80,000/- (Rupees Two Crores Sixty One Lakhs Eighty Thousand Only) paid by the plaintiff with interest at 24% per annum from the date of payment till the date of realization;

b) To grant permanent injunction restraining the defendants, their men, servants, agents or any one claiming under or through the defendants from alienating or creating any encumbrance over the suit schedule property;

c) To direct the defendants to pay the costs of the suit.

For Plaintiff : Mr.S.Raveekumar
For Defendants : Mr.Manoharan S. Sundaram

J U D G M E N T

The matter was referred for mediation and the parties have settled the issue among themselves and a

Mediation Agreement dated 21.03.2016 has been entered into

incorporating the Memorandum of Compromise dated 21.03.2016, which reads as follows:

"BEFORE THE TAMIL NADU MEDIATION AND CONCILIATION CENTRE,
HIGH COURT, MADRAS.
MEDIATION AGREEMENT

Date: 21.03.2016

Mediation Case No. : 1031/2015

Case Details : O.A.No.550/2015 in
C.S.No.425/2015

Referred by : Hon'ble Mr. Justice
K.Ravichandrabaabu

Date of Order : 28.07.2015

Parties Name: M/s. Salma Construction P Ltd.,
Applicant / Plaintiff

Vs

P. Saroja Ammal - Respondents / Defendants
& 5 others

Counsel Name : M/s. R. Meenal, S. Raveekumar,
T. Sezhian
Advocate for plaintiff
M/s. Manoharan S. Sundaram
Advocate for Defendants

Both sides, out of their own volition and without any pressure or coercion from any side have agreed as follows:

This Memorandum of Compromise executed at Chennai on this the 21st day of March 2016

BY AND BETWEEN

M/s. Salma Constructions Pvt. Ltd., at 18 (7), West Avenue Road, Kodambakkam, Chennai - 600 024, herein after referred to as the Party of the First Part / Plaintiff

AND

Saroja Ammal, 2. J. Vetriveeran, 3. J. Jayaveeran, 4. J. Pandurangan, 5. J. Mathivanan and 6. J. Gopalakrishnan, all residing at No. 134, Mount Poonamallee Trunk Road, Porur, Chennai - 600 116, herein after referred to as the Parties of the Second Part / Defendants.

The terms "plaintiff" and "defendants" wherever used shall not only include themselves but also their legal heirs, representatives, agents, administrators and assigns.

WHEREAS the defendants are the owners of the property at No. 134, Mount Poonamallee Trunk Road, Porur, Chennai 600 116 comprised in 98, Porur Village, Ambattur Taluk, Thiruvallur District more fully described in the Schedule hereunder.

WHEREAS the defendants who are already running a theatre in the name of "Gopalakrishna" in the said premises were desirous of putting up a residential and commercial complex by demolishing the existing structure and for the same, were on the lookout for a promoter.

WHEREAS the defendants after several rounds of negotiations decided to entrust the development project to the plaintiff by entering into a Memorandum of Understanding dated 01.03.2014.

WHEREAS the defendants while entering into

the Memorandum of Understanding, informed the plaintiff that they had secured loans on the property by mortgaging the property to various persons.

WHEREAS, as per the Memorandum of Understanding, the plaintiff will put up the construction of the commercial and residential complexes at its own cost. The defendants would be entitled to 54% of the built up area inclusive of the common area and in turn, 46% of the undivided share of land to the plaintiff or to the persons nominated by them.

WHEREAS as per the Memorandum of Understanding, the plaintiff had to pay Rs. 30,00,000/- on the date of execution of the Memorandum of Understanding, Rs. 1,70,00,000/- on or before entering into a Joint Venture Agreement and execution of a Power of Attorney and Rs. 1,00,00,000/- after getting the planning permission. Whereas the defendants agreed to discharge and settle their loans out of the advances received from the plaintiff.

WHEREAS the plaintiff expressed their willingness to fulfill their part of obligation under the Memorandum of Understanding within two months itself and requested the defendants to execute the

Joint Venture agreement. However, the defendants informed the plaintiff about more unsecured loans and that they were not in a position to deliver vacant possession and requested the plaintiff to part with more money and therefore, the execution of the Joint Venture agreement was postponed until the time the above unsecured loans were settled.

WHEREAS at the request of the defendants, the plaintiff paid various sums to various creditors on various dates to clear their debts. Even though the plaintiff was required to pay only Rs. 2,00,00,000/- before the execution of the Joint Venture agreement, at the request of the defendants under various circumstances, the plaintiff had ended up paying Rs. 2,61,80,000/- in addition to a sum of Rs. 3,00,000/- by way of a hand loan. However, the defendants did not come forward to execute the Joint Venture agreement as promised by them.

WHEREAS under the above circumstances, the plaintiff filed a specific performance suit in C.S.No. 425 / 2015 before the Hon'ble Madras High Court for execution and registration of Joint Venture Agreement and Power of Attorney. An application for interim injunction was filed and interim injunction was also granted by the Hon'ble

Court restraining the defendants from alienating the property.

WHEREAS during the pendency of the suit the defendants expressed their willingness to amicably settle the dispute out of court by entering into a Memorandum of Compromise agreeable to both the parties. The plaintiffs agreed to the above proposal made by the defendants.

WHEREAS pursuant to the above proposal, the plaintiff and the defendants have agreed to a One Time Settlement (OTS) of Rs. 3,14,00,000/-. The OTS amount is being split up as per the mutual consent of the plaintiff and defendants, which shall be settled as per the terms of this agreement.

Now the plaintiff and the defendants after negotiations are entering into this Memorandum of Compromise with the following terms and conditions:

Now this Memorandum witnesseth as follows:

- 1. That the defendants shall pay a sum of Rs. 3,14,00,000/- on or before the 31/03/2016 for extinguishing the rights of the plaintiff over the property. In furtherance of the agreement the defendant have already paid Rs. 2,00,000/- The balance of

Rs.3,12,00,000/- (Three Corers twelve lakh only is to be paid before 31.03.2016.

- 2. The defendants have applied for a loan with REPCO Bank, which has after scrutinizing the documents , issued an in principle vide letter dated 17.03.2016, sanction a loan of Rs.5,00,00,000/- Out of it the balance consideration shall be paid.
- 3. The defendants affirm and assume the plaintiff that the funds would be transferred to them by the bank before 31.03.2016 provided that the injunction order in suit filed by the plaintiff is vacated and have issued a post dated cheque bearing no 191435, drawn on State Bank of Bikaner & Jaipur, No 6, Ramakrishna main Rd, Porur, Chennai -16 for Rs 3,12,00,000/- (Rupees three corers twelve lakh rupees only)
- 4. Upon failure by the defendants to comply with payment of Rs. 3,12,00,000/- before 31.03.2016 for any reason whatsoever this One Time Settlement agreed between the parties shall cease to operate and the suit filed by the plaintiff in C.S. No. 425 / 2015 shall stand decreed in favour of the plaintiff and the plaintiff shall proceed with the execution and registration of the Joint

Venture Agreement or in the alternative, the defendants agree that the plaintiff is entitled to land proportionate to the value of Rs. 3,14,00,000/- as per the guideline value and plaintiff can get the sale deed executed through Court in case of failure by the defendants to execute such deed within fifteen days of demand by the plaintiff. The defendants shall not raise any objections when the plaintiff chooses to exercise any one of the above two options. Any amount paid by the defendants shall be refunded by the plaintiff without any interest on such amount.

- 5. The defendants shall not be permitted to create encumbrances on the property for the purpose of raising money for payment of the amount agreed in clause.
- 6. That upon payment of the entire amounts, the plaintiff would cease to hold any right over the schedule properties.
- 7. The Plaintiff and defendants have entered into this Memorandum of Compromise as per their own volition and agree to record this Memorandum in C.S. No. 425 / 2015 and the suit shall stand decreed in terms of this Memorandum and injunction application can be closed to enforce the settlement .

In witness whereof the abovementioned parties have put their respective signatures in the day, month and year above mentioned after being explained the contents in the presence of the following witnesses:

SCHEDULE OF PROPERTY

ITEM No.1:

All that piece and parcel of landed property situated at No.98, Porur Village, Ambattur Taluk, Thiruvallur District comprised in Survey No. 112/2A1C1 (Part) measuring an extent of 4728 Sq.ft. and bounded on the

North by : Mrs. Saroja Ammal &
Gopalakrishnan's land

South by : Mr.J.Vetriveeran's land

East by : Kesaval Naidu weigh bridge

West by : 16 Feet common passage

and lying within the Registration District of Chennai South & Sub-Registration District of Kundrathur.

ITEM No.2:

All that piece and parcel of landed property situated at No.98, Porur Village, Ambattur Taluk, Thiruvallur District comprised in Survey No. 112/2A1C1 (Part) measuring an extent of 4706 Sq.ft. and bounded on the

North by : Mrs. Saroja Ammal &
Gopalakrishnan's land

South by : Mr.J.Pandurangan's land
 East by : Kesaval Naidu weigh bridge
 West by : 16 Feet common passage
 and lying within the Registration District
 of Chennai South & Sub-Registration
 District of Kunderathur.

ITEM No.3:

All that piece and parcel of landed
 property situated at No.98, Porur Village,
 Ambattur Taluk, Thiruvallur District
 comprised in Survey No. 112/2A1C1 (Part) &
 Survey No.112/3A1 measuring an extent of
 4695 Sq.ft. and bounded on the
 North by : Mr. Vetriveeran's land
 South by : Mr.J.Mathivanan's land
 East by : Kesaval Naidu weigh bridge
 West by : 16 Feet common passage
 and lying within the Registration District
 of Chennai South & Sub-Registration
 District of Kunderathur.

ITEM No.4:

All that piece and parcel of landed
 property situated at No.98, Porur Village,
 Ambattur Taluk, Thiruvallur District
 comprised in Survey No. 112/3A1 (Part) as
 per Patta No.4209 New Survey No.112/7
 measuring an extent of 4728 Sq.ft. and
 bounded on the
 North by: Mr.J.Pandurangan's land
 South by: Mr.J.Jayaveeran's land
 East by : Kesaval Naidu weighs bridge
 West by: 16 Feet common passage

And lying within the Registration District
of Chennai South & Sub-Registration
District of Kunderathur.

ITEM No.5:

All that piece and parcel of landed
property situated at No.98, Porur Village,
Ambattur Taluk, Thiruvallur District
comprised in Survey No. 112/3A1(Part) as
per Patta No.4208 New Survey No.112/4, 5 &
8 measuring an extent of 3600 Sq.ft. and
bounded on the

North by: Mr.J.Mathivanan's land

South by: Mount Poonamallee Road

East by : Kesaval Naidu weighs bridge

West by: 16 Feet common passage

and lying within the Registration District
of Chennai South & Sub-Registration
District of Kunderathur.

Sd/-

Sd/-

A.K.Alaudeen

1. P.Saroja Ammal.

Authorized signatory

M/s.Salma Construction Pvt. Ltd.,

Chennai - 24

(Applicant /Plaintiff.)

2. J.Vetriveeran

3. J.Jayaveeran

4. J.Pandurangan

5. J.Mathivanan

6.J.Gopalakrishnan

(Respondents /

Defendants 1 to 6)

Manoharan

S.Raveekumar

S.Sundaram

(Counsel for Applicant
Plaintiff)

(Counsel for /
Respondents /
Defendants) "

5. Accordingly, the plaintiff has readily come forward to pay a sum of Rs.75,000/- (Rupees Seventy Five Thousand Only) and the defendants agreed to pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the Tamil Nadu Mediation and Conciliation Centre, Madras High Court, Chennai. The above payment shall be made within a period of three weeks from the date of receipt of a copy of this order.

23.03.2016

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