

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-01-2016

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

CIVIL SUIT No.1086 of 2008

1.Y.Visweswar
2.Y.V.Nagaraj
 Represented by his Power Agent
 Y.Visweswar
3.Y.V.Shankar Kumar
 Represented by his Power Agent
 Y.Visweswar
4.Y.Sivasubramanyam
5.Mahesh Yanambakkam
 Represented by his Power Agent
 Y.Visweswar .. Plaintiffs

vs

1.M/s.Kasi Housing & Development Limited
Rep. By it's Managing Director
M.K.Mathivathanan
No.91 & 92, Jawaharlal Nehru Salai
Ashok Nagar, Chennai 600 083

2.M.K.Mathivathanan .. Defendants

Civil Suit filed under Order IV Rule 1 of O.S. Rules read with Order VII Rule 1 of Code of Civil Procedure praying for a judgment and decree directing the defendants to render accounts in respect of the sale made by them in the plaint schedule property as Power Agent of Y.Sarojamma and to deliver possession of the plaintiffs' share measuring a super built up area of 1800 square feet comprising two flats measuring 900 square feet each out of

the total constructed area in the schedule property and declaring that the sale made by the defendants in respect of the schedule mentioned property after the death of Y.Sarojamma - Principal is null and void and to pay restricted damages of Rs.5,00,000/- for use and occupation and for costs.

For Plaintiffs : Mr.V.Ravi

For Defendants : Set ex-parte on 13.7.2015

JUDGMENT

The plaintiffs would aver that they are the legal heirs of Tmt.Sarojammal @ Sarojamma, wife of Y.Subbiah, who was the resident of the suit schedule property, and when he was alive, had appointed one P.A.S.Sundar as his Power of Attorney Agent vide registered Power of Attorney, bearing Document No.87 of 1996 dated 2.2.1996, with a view to develop the plaint schedule property, and an agreement dated 11.8.1999, also came into being between their mother represented by the Power of Attorney Agent, and one S.Sivaram in respect of the sale of 30% of undivided share of land in the plaint schedule property, and however, the Power of Attorney Agent as well as well as the Agreement Holder did nothing to develop the property and they prevailed upon the plaintiffs' mother to enter into another agreement with the third party for development.

2.It is further averred in the plaint, that the mother of the plaintiffs had appointed the second defendant as her Power of Attorney Agent vide registered Document No.330 of 2001 dated 13.6.2001, on the file of the Office of the District Registrar, Central Madras, and the building agreement dated 2.6.2001, was also entered into, wherein, it was agreed that the residential flats measuring 1800 square feet (900 square feet each for two flats), have to be constructed and it was also mutually agreed that the defendants shall pay a sum of Rs.6 lakhs to M/s.Procon Homes Pvt. Ltd., Chennai - 24, for the purpose of cancellation of the earlier agreement and clear the dues.

3.The plaintiffs would further state that one S.Sivaram, who was a party to the agreement dated 11.8.1999, also filed a suit in O.S.No.4170/2003, on the file of the Court of IV Additional City Civil Judge, Chennai, praying for a judgment and decree, wherein, the Power of Attorney Agent, who has been arrayed as seventh defendant to support the case of the plaintiff, and on the demise of Sarojamma, the plaintiffs got themselves impleaded as legal heirs and contested the suit and it was dismissed on 18.3.2005, by the VI Additional Fast Track Court, and no appeal has been filed challenging the said judgment and decree, and it has become final.

4.It is further averred by the plaintiffs that as agreed, possession of the flats has not been handed over, and when they requested the defendants, they were informed that there was an agreement with the plaintiffs' mother with regard to the conveyance of undivided share, and despite that, the plaintiffs are ready and willing to accept the extent of 1,800 square feet built up area in the plaint schedule property, and in spite of repeated requests and pleas made, the defendants did not come forward to hand over possession of the same and as the legal heirs of deceased Sarojamma, they are entitled to get the same and hence, they came forward to file the present suit for the above said reliefs.

5.Though the defendants have been served, they did not appear and hence, the suit was listed under the caption "Undefended Board" on 13.7.2015, and both the defendants were called absent and this Court set them ex-parte.

6.The following issues arose for trial and adjudication:-

(1) Whether there was a building agreement dated 2.6.2001, (Ex.P6), between Sarojammal and the defendants?

(2) Whether the defendants had fulfilled the terms of Ex.P6?

(3) Whether the plaintiffs are entitled to decree for rendition of accounts in respect of the sale made by them?

(4) Whether the defendants are liable to deliver possession of super built up area of 1,800 square feet constructed in the suit schedule property?

(5) Whether the plaintiffs are entitled to declaration?

(6) Whether the plaintiffs are entitled for damages of Rs.5 lakhs for use and occupation?

(7) To what relief, the plaintiffs are entitled to?

7.The first plaintiff has filed his proof affidavit in lieu of chief-examination and through him, Ex.P1 to P14 have been marked.

8.The learned Counsel appearing for the plaintiffs, would submit that it is not in serious dispute, that the plaintiffs are the legal heirs of deceased Sarojamma and as per Ex.P6, building agreement dated 2.6.2001, the defendants are under obligation to construct two flats measuring 900 square feet each, and hand over the same and though the undivided share of the land has been

conveyed, still, they are interested in getting back possession of two flats and despite repeated efforts and reminders, the defendants did not come forward to perform their part of obligation and hence, the plaintiffs are constrained to file the present suit and prays for decreeing the same.

9. ISSUE No. (1) :- It is not in serious dispute, that under Ex.P6, building agreement, entered into between Sarojamma and the defendants, the defendants are under obligation to put up construction of two flats measuring 900 square feet each, and deliver the same. Subsequently, the earlier agreement holder viz. S.Sivaram, filed a suit in O.S.No.4170/2003, on the file of the Court of IV Additional City Civil Judge, Chennai, which after contest, came to be dismissed, as evidenced by Exs.P10 and P11 the judgment and decree respectively. The mother of the plaintiffs - Sarojamma died on 9.9.2002, as evident from Ex.P7, and one of the legal heirs also died on 28.4.2006, as evidenced by Ex.P12. A perusal of the certified copies of the Encumbrance Certificates marked as Exs.P13 and P14, would also disclose that the undivided share of the property has been conveyed in favour of the third parties, and despite that, the defendants did not fulfill their obligation with regard to the construction and handing over of flats. Therefore, issue No.(1) is answered in affirmative and in favour of the plaintiffs.

10. **ISSUE No. (2):-** In view of the finding given in issue No.(1), the defendants had failed to fulfill their part of obligation under Ex.P6 agreement, and as such, they are liable for the suit claim.

11. **ISSUE No. (3):-** Admittedly, possession of the suit schedule property has been handed over to the defendants for it's development and therefore, they are liable to render accounts to the plaintiffs.

12. **ISSUE No. (4):-** A perusal of Ex.P6 agreement, would disclose that the defendants after putting up the superstructure, are bound to hand over two flats each measuring 900 square feet, and since they did not do so, the plaintiffs are entitled to get the same. Therefore, this issue is answered in affirmative and in favour of the plaintiff.

13. **ISSUE No. (5):-** In the light of the findings given in issue Nos.(1) to (4), the plaintiffs are entitled to declaration as prayed for.

14. **ISSUE No. (6):-** Since the defendants did not fulfill their obligation under Ex.P6, the plaintiffs are entitled to damages as prayed for by them.

15. **ISSUE No. (7) :-** For the discussions made above, the plaintiffs are entitled to the judgment and decree as prayed for.

16. In the result, the civil suit is decreed as prayed for, with costs and the defendants are directed to render accounts in respect of the sale made by them in the plaint schedule property as Power Agent of Y.Sarojamma, and are further directed to deliver possession of the plaintiffs' share measuring a super built up area of 1,800 square feet comprising two flats measuring 900 square feet each out of the total constructed area in the suit schedule property, and the sale made by the defendants in respect of the schedule mentioned property, after the death of Y.Sarojamma viz. Principal, is declared as null and void. The defendants are directed to pay to the plaintiffs, a sum of Rs.5,00,000/- (Rupees five lakhs only) towards damages, for use and occupation. Time for delivery of possession is one month from the date of judgment.

List of Witnesses:

P.W.1 Y.Viswewarar

List of Exhibits:

P1 Original Power of Attorney given by the second plaintiff to the first plaintiff

- P2 Original Power of Attorney given by the third plaintiff to the first plaintiff
- P3 Original Power of Attorney given by the fifth plaintiff to the first plaintiff
- P4 02.02.1996 Certified copy of the Memorandum of Understanding
- P5 11.08.1999 Certified copy of the agreement for sale registered as document No.642 of 1999
- P6 02.06.2001 Certified copy of the building agreement
- P7 22.09.2002 Certified copy of the death certificate of Y.Sarojamma
- P8 06.08.2003 Certified copy of the plaint in O.S.No.4170 of 2003
- P9 21.04.2004 Certified copy of the written statement
- P10 18.03.2005 Certified copy of the judgment in O.S.No.4170 of 2003
- P11 18.03.2005 Certified copy of the decree passed in O.S.No.4170 of 2003
- P12 28.04.2006 Print out of the Death Certificate of Y.Swaminathan
- P13 Certified copy of the Encumbrance Certificate for the period 01.01.1987 to 12.12.2006
- P14 Certified copy of the Encumbrance Certificate for the period 01.01.2002 to 30.12.2002

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sd/.M.S.N.J
07.01.2016

//Certified to be a true copy//

Dated this the day of 2016

R.s/02.03.2016

COURT OFFICER