

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
01.11.2016	18.11.2016

Coram:

The Hon'ble Mr.Justice A.SELVAM
and
The Hon'ble Mr. Justice P.KALAIYARASAN

O.S.A.No.51 of 2008
& M.P.No.1 of 2008

1. Geeta Bhupatrai
2. Pervin A.Ramanlal
3. Premila S.Singapuri .. Appellants

Vs.

1. M/s.Monaco Properties Private Ltd.,
Rep.by its Managing Director
Mr.Ravi N.Iyer
2. Ravi N.Iyer .. Respondents

This Appeal is preferred under Order XXXIX Rule (I) of O.S.Rules r/w Clause 15 of the Letters Patent Act against the order and decreetal order of this Court dated 17.2.2005 in C.S.No.177 of 1994.

For Appellants : Mr.R.Thiagarajan

For Respondents : No appearance

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED
BY A.SELVAM, J.)

This Original Side Appeal has been directed against the judgment and decree dated 17.2.2005 passed in C.S.No.177 of 1994 by the learned Single Judge of this Court.

2. The appellants herein, as plaintiffs, have instituted C.S.No.177 of 1994 on the file of this Court, praying to grant the reliefs of declaration, permanent injunction and also for the reliefs of directing the defendants to pay a sum of Rs.59,500/- per month as damages and also for directing the defendants to pay a sum of Rs.12,00,000/- for completing the pending work.

3. The material averments made in the plaint are that the first defendant M/s.Manaco Properties Private Limited has been incorporated as company in the year 1987. The first and second plaintiffs have become its shareholders and also Directors of the same. The second defendant, by name Ravi N.Iyer has acted as Managing Director of the

first defendant. The first defendant has entered into an agreement with one A.B.Maricar and Fathima Bibi for the purpose of purchasing the property, which situates at Nos.43 and 44, Montieth Road for a sum of Rs.94,00,000/-. The initial advance of Rs.6,00,000/- has been paid and subsequently further payment of Rs.15,00,000/- has also been paid. Due to financial constraints, the first defendant has not been able to make further payments. Under such circumstances, it has been agreed that the first defendant can sell undivided 8500 Sq.Ft. The first defendant has also promised to construct and deliver office accommodation of 8500 Sq.ft with specified car parking etc., to the plaintiffs jointly. The plaintiffs have paid the entire sale consideration as mentioned in the Builder's agreement. The defendants have promised to pay a sum of Rs.15 Lakhs to the first and second plaintiffs towards repayment of unsecured loans invested by them in the company. Pursuant to the agreement, the first defendant has executed registered Sale Deed. After completion of the third floor, the constructed area of 8000 Sq.ft and car parking have been handed over to the plaintiffs jointly on 5.11.1993. However, certain works are pending. Out of the

agreed amount of Rs.15 Lakhs, the defendants have paid only a sum of Rs.11,75,000/- and the balance of amount has to be paid by the defendants. The second defendant has handed over a cheque for a sum of Rs.3,25,000/-. Under the aforesaid circumstances, the plaintiffs have become title owners of the third floor of the constructed area. Since the portion, which has been handed over to the plaintiffs, is in the stage of incompleteness, the plaintiffs have not been able to utilize the same profitably. Without finishing work, the defendants are making arrangements to interfere with the peaceful possession of the plaintiffs. Under the said circumstances, the present suit has been instituted for the reliefs sought in the plaint.

4. The material averments made in the written statement can be stated like thus:

The first defendant has agreed to hand over plaint schedule property to the plaintiffs. After completing construction, the same has been given to the plaintiffs long prior to institution of the suit. The first defendant has put up construction as per terms and conditions of the

agreement. The plaintiffs are in possession of the suit property. The defendants are entitled to get Rs.1,46,390/- from the plaintiffs. There is no merit in the suit and the same deserves to be dismissed.

5. On the basis of the rival pleadings raised on either side, the learned Single Judge has framed necessary issues and after analyzing both the oral and documentary evidence has decreed the suit only in respect of the reliefs of declaration and permanent injunction and dismissed the same in respect of the remaining reliefs sought in the plaint. In respect of disallowed reliefs, the present Original Side Appeal has been filed at the instance of the plaintiffs as appellants.

6. Even though the respondents/defendants have been served with notices, appearance has not been made. Under such circumstances, the present Original Side Appeal has to be disposed of on the basis of available evidence on record, coupled with the arguments put forth on the side of the appellants/plaintiffs.

7. It is an admitted fact that in the plaint, the following reliefs are claimed:

- A) Declaring that the plaintiffs are the title owners of the suit property shown in schedule below:
- B) Prohibiting the defendants herein from interfering with possession and enjoyment of the plaintiffs of the suit property in any manner either by themselves or by their agents or servants by issue of a permanent prohibitory injunction and
- C) Directing the defendants to pay to the plaintiffs the sum of Rs.59,500/- per month as damages and loss of income to the plaintiffs as and from 5.11.1993 on which the possession was delivered by the defendants; and
- D) Directing the defendants to complete the pending work that are yet to be carried out relating to civil, electrical and sanitary work to the suit property or directing the defendants to pay the sum of Rs.12,00,000/- that being the amount modestly estimated for completion of these works or such

amounts that this court may find due on this account,

by the defendants to the plaintiffs; and

E) Directing the defendants 1 and 2 and their counsel

Mrs.Nirmal Cariappa to deliver the title deeds six in

number, viz.,

<i>Sale Deed dated</i>	<i>Document No.</i>	<i>Vendor</i>	<i>Purchaser</i>
27.3.1991	2295/92	A.B.Mariker	Premila S.Singapuri
27.3.1991	2296/92	A.B.Mariker	Parvin A.Ramanlal
27.3.1991	2297/92	A.B.Mariker	Geetha Bhupatrai
27.3.1991	2298/92	Fathima Bi	Premila S.Singapuri
27.3.1991	2299/92	Fathima Bi	Parvin A.Ramanlal
27.3.1991	2300/92	Fathima Bi	Geetha Bhupatrai

all registered at Sub Registrar, Periamet, Chennai.

8. As mentioned supra, the learned Single Judge has decreed the suit in part only in respect of the reliefs "A" and "B" and negated the remaining reliefs.

9. Before contemplating the submissions made on the side of the appellants/plaintiffs, the Court has to narrate the following admitted facts:

It is an admitted fact that Ex.P.1 to Ex.P.3/agreements have become emerged between the plaintiffs and defendants with regard to

purchase of property and also construction. It is also equally an admitted fact that the first defendant as per agreement has to put up construction in the third floor and handed over the same in complete form to the plaintiffs.

10. The gravamen expressed on the side of the plaintiffs is that on 5.11.1993, in the stage of incompleteness, the third floor has been handed over to them and despite of repeated demands made on their side, the defendants have failed to complete the remaining work.

11. The learned counsel appearing for the appellants/plaintiffs has repeatedly contended that since the third floor has been handed over to the plaintiffs in an incomplete stage, the plaintiffs have not been able to utilize the same in a profitable manner. Under such circumstances, the property in question has been kept vacant for some time and therefore, the relief of "C" has been sought in the plaint. Further, the defendants are bound to complete the balance of work. Under such circumstances, the relief "D" has been sought in the plaint. Since the defendants have failed to hand over title deeds, the relief "E" has been sought in the plaint. But the learned Single Judge, without

considering the voluminous documents filed on the side of the plaintiffs, has erroneously negated the reliefs "C" to "E" and therefore, the judgment and decree passed by the learned Single Judge are liable to be modified and the suit is liable to be decreed in toto.

12. As stated earlier, the learned Single Judge has granted the reliefs "A" and "B". The learned Single Judge has negated the prayer "C" mainly on the ground that the plaintiffs cannot claim the amount mentioned in the prayer "C", since they have acquiescenced.

13. The specific case of the plaintiffs is that on 5.11.1993, the property in question has been handed over to the plaintiffs, but the entire construction has not been completed. Further, on the side of the plaintiffs, voluminous documents have been filed for the purpose of proving the subsequent construction so as to complete the entire portion of the building. Therefore, it is needless to say that the defendants have not handed over the property in question to the plaintiffs in a complete form. Since the defendants have not handed over the property in question to the plaintiffs in a complete form and

since on the side of the plaintiffs, requisite evidence are available for the purpose of proving that they spent something towards completion, this Court is of the view that the observation made by the learned Single Judge for rejecting the prayer "C" is erroneous.

14. The specific claim made in the prayer "C" is that the plaintiffs are entitled to get damages for month to the tune of Rs.59,500/- at the rate of Rs.7/- per Sq.ft.

15. Considering the aforesaid observation, this Court is of the view that the plaintiffs are entitled to get damages at the rate of Rs.7/- per Sq.ft. Therefore, the plaintiffs are entitled to get prayer "C".

16. Now the Court has to look into the prayer "D". The specific claim in the form of prayer "D" is to direct the defendants to complete pending works, directing them to pay a sum of Rs.12,00,000/-.

17. It is seen from the Exhibits filed on the side of the plaintiffs

that they engaged one Everest Constructions for completing the building in question and this Court has calculated the entire amount actually spent by the plaintiffs and it comes to Rs.6,14,600/-. Therefore, with regard to prayer "D", the plaintiffs are entitled to get Rs.6,14,600/- from the defendants.

18. The claim of the plaintiffs in the form of prayer "E" is to direct the defendants 1 and 2 or their counsel to deliver the original title deeds dated 27.3.1991.

19. The learned Single Judge has observed to the effect that the relief "E" has been included subsequently. Prior to institution of the suit, no pre-suit notice has been issued with regard to that relief. Further it is seen from the records that the plaintiffs have changed house tax in their names. If really they are not in possession of the original documents, definitely they would not have changed house tax in their names and further, no proper opportunity has been given to the defendants with regard to relief "E". Further, the learned counsel appearing for the appellants has not raised specific argument with regard to relief "E". Therefore, the plaintiffs are not entitled to get

relief "E".

20. It has been observed that the plaintiffs are entitled to get relief "C" as prayed for and also a part of the relief "D" and to that extent, the present Original Side Appeal is liable to be allowed in part.

In fine, this **Original Side Appeal is allowed without cost**. The judgment and decree dated 17.2.2005 passed in C.S.No.177 of 1994 by the learned Single Judge are modified as follows:

"In addition to the reliefs granted by the learned Single Judge, the plaintiffs are entitled to get **relief "C"** and also entitled to get **Rs.6,14,600/- (Rupees Six Lakhs, fourteen thousand and six hundred only)** towards the cost of subsequent construction and to that extent also, the suit is decreed without cost."

Consequently, connected Miscellaneous Petition is closed.

(A.S.,J.) (P.K.,J)
18.11.2016

Index : Yes/No
ajr

**A.SELVAM, J.
and
P.KALAIYARASAN , J.**

ajr

**Judgment in
O.S.A.No.51 of 2008**

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