IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 01.02.2017

PRONOUNCED ON: 17.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.170 of 2010
OA.No.212 of 2010

1. M/s.Akshaya Constructions by its Partners
   De.Chellappa and A.D.Venkatesan
   Chennai-47

2. De.Chellappa
3. A.D.Venkatesan ... Plaintiffs

Vs

1. Sri Sathya Sai Mandali Trust by its Executive Trustee
   M.L.Ramakrishnan

2. M.L.Ramakrishnan
3. Sivakumari
4. Thiyagikuppuraj
5. S.Ravindrakumar

6. Mr.Justice N.V.Balasubramanian (Retired)
   Chairman Interim Committee ... Defendants

Prayer:- This Civil Suit is filed under Order VII Rule 1 of CPC read with Order II Rule 1 of the Original Side Rules for the reliefs as stated therein.

| | | |
|---|---|---|
| For Plaintiff | : | Mr.V.Ramesh |
| For Defendants | : | DD1, 4 & 5-Set Exparte<br>DD2 & 3-Died<br>Mr.R.Kannan-D6 |

JUDGEMENT

This civil suit had been filed to pass a judgement and decree, against the Defendants:-

(a) directing the Defendants to pay a sum of Rs.42,00,000/-.

(b)directing the Defendants to pay interest at 18% p.a. on Rs.42,00,000/- with effect from 28.9.2007.

(c)for costs.

2. It had been stated in the plaint that the 1st Plaintiff, a registered partnership Firm represented by the Plaintiffs 2 and 3, is engaged in the real estate business. The 1st Defendant is a Trust and 2nd Defendant is its Managing Trustee and the Defendants 3 to 5 are Trustees. The 1st Defendant is the owner of the land to an extent of 2 grounds in Town S.No.6/1, Block 4, Adyar Zamin Village, in Patta No.34. The Plaintiffs and the 1st Defendant had entered into an sale agreement dated 24.9.2005 in respect of the said property for a total sale consideration of Rs.1,15,00,000/- and an advance of Rs.10,00,000/- was paid by cash and it was also agreed that a sum of Rs.40,00,000/- will be paid by the Plaintiffs to the 1st Defendant to get permission of the concerned civil court to sell the suit property and the sale was to be completed within a period of five months. It had been stated that as per clause 4, the 1st Defendant had also agreed to revive the order of the court dated 19.6.1992 made in CS.No.858 of 1991 or to obtain fresh permission of the court for selling the suit property within three months. As per clause 7, it was also agreed by the Defendants 1 and 2 that within 3 months, the Defendants 1 and 2 shall obtain fresh extract of permanent land record/ patta of the suit property regarding the physical

measurement of the schedule property measuring 4800 sq.ft.

3. It had been further stated in the plaint that the Plaintiffs had paid a sum of Rs.10,00,000/- by cheque no.224618, dated 19.10.2005 and Rs.5,00,000/- by cheque no. 242655, dated 28.10.2005 and Rs.5,00,000/- by cheque no.2246084 dated 9.11.2005 and the said payments were acknowledged by the 2nd Defendant on 9.11.2005. On 22.11.2005, a further sum of Rs.50,000/- by cash was paid to the 2nd Defendant. Though the Plaintiffs were furnished with the xerox copies of all the relevant documents relating to the suit property, order copy of the High Court made in CS.No.858 of 1991 was not furnished. It had been further stated that the Defendants 1 and 2 did not take any steps and the Defendants did come forward to sell the suit property. Hence, the Plaintiffs had issued a notice dated 26.5.2007, referring to the Board Resolution dated 1.9.2005, authorizing the 1st Defendant to sell the property and calling upon him to execute the sale deed. The Defendants were also attempting to sell the suit property to third parties. Thereafter, the Plaintiff had caused a public notice in “The Hindu” dated 30.5.2007. The Plaintiffs were received a reply notice dated 3.6.2007, referring to a suit in CS.No.477 of 1993 for framing a scheme to administer the 1st Defendant Trust and A.No.709 of 2005 to set aside the order in CS.No.858 of 1991. Thereafter, the 1st Defendant had executed a bond dated 18.9.2007 acknowledging the sale agreement dated 24.5.2005 and the payment of Rs.30,50,000/-. There was a clear admission that the Defendants 1 and 2 had failed to perform their

obligations as per the terms of the sale agreement and agreed to return a sum of Rs.42,00,000/- towards principal, interest and damages within 10 days. A cheque for Rs.42,00,000/- bearing No.114129 dated 28.9.2007 drawn on Bank of India, Chennai-32 was issued in the name of the 1st Plaintiff. However, the 1st Defendant by letter dated 25.9.2007, requested the Plaintiff to present the said cheque after intimation from the 1st Defendant. Thereafter, the Defendants 1 and 2 came forward to execute the sale deed in favour of the Plaintiffs and requested the Plaintiffs not to pursue the bond dated 18.9.2007 and the cheque dated 28.9.2007. However, the Defendants 1 and 2 did not allow the Plaintiffs to present the cheque nor came forward to execute the sale deed. Hence, the Plaintiffs had issued another legal notice dated 01.02.2008, rejecting the bond dated 18.9.2007 and the letter of the 1st Defendant dated 25.9.207 and stating that the Plaintiffs are entitled to legal remedy as per the sale agreement dated 24.9.2005.

4. It had been further stated that again the Plaintiffs had called upon the 1st Defendant to receive the balance sale consideration and to execute the sale deed. The 1st Defendant had also sent a reply notice dated 15.2.2008, containing false allegations. It had been stated that as regards the bond dated 18.9.2007, the cheques for Rs.42,00,000/- and Rs.1,00,000/-, the 1st Defendant claimed that the Plaintiffs had forced the 1st Defendant to execute the letter of undertaking and the 1st Defendant had lodged a police complaint against the Plaintiffs and therefore, the letter of undertaking/bond dated 18.9.2007 is

unenforceable in the eye of law as it had been obtained by coercion and force. Hence, the Plaintiff had claimed that the Defendants 1 and 2 were never ready and willing to perform their part of the obligations contained in the agreement. The Plaintiffs by rejoinder dated 7.3.2008 denied the averments contained in the reply notice dated 15..2.2008 and requested the 1st Defendant again to complete the obligation of the sale agreement. Since there was no response from the Defendants, this civil suit had been filed for the reliefs as stated above.

5. The 6th Defendant had filed his written statement. The 6th Defendant is the Chairman of the Interim Committee, Committee for Sri Sathya Sai Mandali Trust, Guindy and Sri Sai Baba Temple Trust. It had been stated that M.J.Loganatha Mudaliar, a well known business man, became a strong devotee of Sathya Sai Baba and had entered into a deed of trust dated 3.2.1949 for construction of Sri Sathya Sai Baba Temple at Guindy. M.J.Loganatha Mudaliar was the Founder Trustee. He had nominated Balakrishna Mudaliar, Sampangi Mudaliar, M.L.Gopal Rao and S.Lenin as Trustees. He died on 23.10.1962. All the other Trustees also died. His son M.L.Ramakrishnan became the Trustee, however, without any authority and has also included other persons as Trustees, which was not valid. He also alienated the temple property. Therefore, the grand sons of M.L.Loganatha Mudaliar filed CS.No.477 of 1993. It had been stated that the present suit arose out of a private transaction between the Plaintiff and the 2nd Defendant M.L.Ramakrishnan wherein the 2nd Defendant had entered into an agreement of sale of trust property for Rs.1.15

crores and received Rs.42 lakhs as advance. The suit was filed for recovery of the same. It had been stated that this Defendant who had been appointed by the court by order dated 17.3.2010 along with other very reputed persons are not involved in the suit private agreement of sale. It had been stated that the said agreement of sale is not binding on the 1st Defendant Trust since the 2nd Defendant had no authority to enter into the said agreement of sale. The Plaintiffs entered into the agreement of sale knowing that there were litigations pending in CS.No.477 of 1993. There was also no court order authorizing the 2nd Defendant to sell the property of the 1st Defendant Trust. It had been stated that the Plaintiffs having taken a risk of purchasing the property which is the subject of dispute in CS.No.477 of 1993 have to bear the loss for the risk taken by them and the Trust will not be bound by the actions of the 2nd Defendant.

6. During the pendency of the case, the Defendants 2 to 5 had been set exparte. After the Defendants 2 and 3 had been set exparte, they also expired. Consequently, the Plaintiffs had filed a memo stating that they are giving up the Defendants 1 and 6 in the suit and pursuing with the proceedings against the Defendants 2 to 5. They can proceed against the Defendants 2 to 5 as per Order 22 Rule 4 of CPC. Consequently, a memo giving up the suit against the Defendants 1 and 6 was recorded.

7. The following issues were framed for consideration:-

1. Whether the agreement entered into between the Plaintiffs and the 2nd Defendant is valid in law?

2. Whether the 2nd Defendant is competent to represent the 1st

Defendant Trust, when the suit in CS.NO.477 of 1993 for framing a scheme for the management is pending?

3. Whether the suit is maintainable against the first and sixth Defendants for the transaction between the Plaintiff and the 2nd Defendant?

4. Whether the 1st Defendant could be made liable for the conduct of the 2nd Defendant who has got no authority?

8. To substantiate the issues, the Plaintiffs examined the Partner of the Plaintiff Company as PW.1 and also marked Ex.P1 to Ex.P17.

9. Ex.P2 is the original sale agreement dated 24.9.2005. It is seen that it had been entered into by the Plaintiff with the 2nd Defendant. Even though it is entered by the 2nd Defendant as Executive Trustee of Sri Sathya Sai Mandali Trust, the seal of the said Trust is not affixed in the agreement. It is therefore clear that the 2nd Defendant had entered into the agreement in his personal capacity. The recitals also did not state that the 2nd Defendant had been authorized by the Trust or by the court in which litigations were pending to entere into the agreement of sale. In fact, it had been stated that the 2nd Defendant was taking steps for seeking permission from the court. It is clear that the said transaction is entirely a private transaction entered into by the 2nd Defendant. The recitals also show that the 2nd Defendant had received a sum of Rs.10 lakhs towards advance sale consideration. It had been stated that further advance of Rs.40 lakhs shall be paid only after obtaining permission from the court. There are no records to show that the court has granted permission to sell the property. Consequently, Ex.P2 has no legal sanctity. It is under such circumstances that the Plaintiffs had filed the suit, seeking recovery of the

amount paid towards the agreement of sale.

10. In the suit, the Plaintiff is not seeking the relief of specific performance. On the first page on the back side of Ex.P2, the details of receipt of sale consideration are also endorsed and they have all been signed only by the 2nd Defendant in his personal capacity. Ex.P4 is the copy of the minutes granting permission to sell the suit property and it is the xerox copy which has not been contested as true copy. Again it does not mean whether the court has granted permission for sale of the suit property and consequently, the said resolution has no legal sanctity and it has to be held that it is not valid in the eye of law.

11. Ex.P10 is the bond dated 18.8.2007 executed by the 2nd Defendant again in his personal capacity. In this connection, the Plaintiffs had issued a notice Ex.P13 dated 1.2.2008, calling upon the Defendants 2 to 5 to come forward to execute the sale deed. However, as noted above, the agreement of sale has no legal sanctity. Under these circumstances, with respect to the issues framed, this court holds that the agreement entered into between the Plaintiffs and the 2nd Defendant is invalid in the eye of law and the 2nd Defendant is not competent to represent the 1st Defendant Trust and the suit in CS.No.477 of 1993 for framing a scheme for the management was pending. It is also held that the suit is not maintainable against the Defendants 1 and 6 for the transaction entered into between the Plaintiffs and the 2nd Defendant. It is also held that the 1st Defendant Trust cannot be made liable for

the conduct of the 2nd Defendant. It is also held that the payments will not validate the sale agreement. In such circumstances, since the Plaintiffs themselves have given up the relief against the Defendants 1 and 6, even though the Defendants 2 and 3 died, the Plaintiffs are entitled to a personal decree for a sum of Rs.42,00,000/- with interest as against the estate of the Defendants 2 and 3 and also against the Defendants 4 and 5 in their personal capacity, with costs.

12. In the result, this civil suit is decreed for a sum of Rs.42,00,000/- as against the estate of the Defendants 2 and 3 and also against the Defendants 4 and 5 in their personal capacity, with interest at 18% p.a. with effect from 28.9.2007 till the date of decree and thereafter at 6% p.a. from the date of decree till the date of realisation and with costs.

17.02.2017

Index:Yes/No
Web:Yes/No
Srcm

1. List of Witnesses Examined on the side of the Plaintiff:-

    1. P.W.1 - De.Chellappa

2. List of Exhibits Marked on the side of the Plaintiff:-

| S.No | Exhibit | Description | Date |
|---|---|---|---|
| 1 | Ex.P. 1 | Certified copy of the settlement deed executed by Loganantha Mudalia in favour of the 1st defendnat | 03021949 |
| 2 | Ex.P. 2 | Original sale agreement executed between 1st and 2nd defendants and the plaintiffs | 24092005 |
| 3 | Ex.P. 3 | Receipt with regard to the acknowledgement of payments received by the second defendnat on behalf of the first defendant from the plaintiffs | |
| 4 | Ex.P. 4 | Photocopy of the minues of meeting authorizing the defendants to sell the property (original of Ex.P4 is with the Defendants) | 25062006 |
| 5 | Ex.P. 5 | Photocopy of the deed of amendment and rectification of the trust deed executed by the second defendant in favour of the first defendant | 28072006 |
| 6 | Ex.P. 6 | Office copy of the legal notice sent to the Defendants 2 to 5 | 26052007 |
| 7 | Ex.P. 7 | Photocopy of the publilc notices issued by the Plaintiff counsel | 30052007 |
| 8 | Ex.P. 8 | Photocopy of the reply notice addressed to the Plaintiff counsel | 03062007 |
| 9 | Ex.P. 9 | Original reply notice addressed to the Plaintiff counsel | 04062007 |
| 10 | Ex.P. 10 | Original undertaking executed by the second Defendant | 18092007 |
| 11 | Ex.P. 11 | Photocopy of the letter addressed to the first Plaintiff to present the cehque | 25092007 |
| 12 | Ex.P. 12 | Original cheque issued by the 2nd Defendant to the 1st Plaintiff for a sum of Rs.42 lakhs | 28092007 |
| 13 | Ex.P. 13 | Photocopy of the legal notice addressed to the Defendants 2 to 5 | 01022008 |
| 14 | Ex.P. 14 | Original reply notice addressed to the Plaintiff counsel | 15022008 |
| 15 | Ex.P. 15 | Photocopy of the rejonder addressed to the counse of the Defendants 2 to 5 | 07032008 |
| 16 | Ex.P. 16 | Original postal receipts (5 nos) | 07032008 |
| 17 | Ex.P. 17 | Original certificate of posting addressed to the Defendants 2 to 5 | 07052008 |

3. List of Witnesses Examined on the side of the defendants:-

   Nil

4. List of Exhibits Marked on the side of the defendants:-

   Nil

17.02.2017

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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.170 of 2010

17.02.2017