IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10.08.2017

PRONOUNCED ON: 01.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.478 of 2016

Pushpa Lavezzo ... Plaintiff

Vs

1. R.Vinod Jai Vimal
2. Mary Manjula
3. V.Naresh
4. V.Raasigha
5. Louis Irudhayaraj ... Defendants

Prayer:- This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC.

For Plaintiff : Mr.S.Mahimai Raj

For Defendants : Set Exparte

JUDGEMENT

This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC, to pass a Judgement and Decree against the Defendants:-

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i. directing the Defendants to jointly and severally pay the sum of Rs.1,85,44,000/- with future interest at the rate of 12% p.a. from the date of institution of the suit till the date of realization to the Plaintiff.

ii. Granting mandatory injunction, directing the Defendants 1 and 2 to return the following original documents to the Plaintiff:-

a) Original sale deed dated 12.01.2011 executed by A.M.Thameem in favour of the Plaintiff which was registered as Document No.197 of 2011 on the file of the SRO, Vaniyambadi and the parent documents.

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b) Original deed of Power of Attorney dated 16.6.2011 executed by the Plaintiff in favour of the 2nd Defendant and registered as Document No.753 of 2011 on the file of the SRO, Tambaram.

c) Original deed of Power of Attorney dated 17.6.2011 executed by the Plaintiff in favour of the 1st Defendant and registered as Document No.835 of 2011 on the file of SRO, Vaniyambadi.

iii. Directing the Defendants to pay the costs of the suit.

2. The case of the Plaintiff is as follows:-

a. The Plaintiff was originally a citizen of India and subsequently, she went to USA and got married to an American Citizen and acquired citizenship in USA. The husband of the Plaintiff died on 20.4.2003 and they had no issues. She used to come Chennai. The Plaintiff met one A.M.thameem, who was working in a Hotel at Chennai and on his representation, the Plaintiff had provided to him several lakhs of Rupees as loan on sympathy. When she asked for repayment of the loan, he did not reply anything. Hence, the Plaintiff had contacted Mr.T.Arulraj, Advocate for legal assistance for recovering the money. The case was entrusted to the 1st Respondent, Junior Advocate of Mr.T.Arulraj. On receipt of complaint from the Plaintiff, the police authorities conducted investigation. Only thereafter, A.M.Thameem, in partial discharge of the liability, had executed a sale deed dated 12.1.2011 for a sum of Rs.9,00,000/-, transferring all his title and interest in respect of the property, viz. House and Ground, bearing Door No.489, Teachers' Colony, Khaderpet, Vaniyambadi.

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b. The 1st Defendant gave only the registration copy of the said sale deed, while retaining the original sale deed and the parent documents. The 1st Defendant introduced his family members, who are the Defendants 2 to 4 herein, to the Plaintiff, for assistant in her medical treatment and the Plaintiff developed cordial relationship with them. The 1st Defendant stated that he was able to recover totally a sum of Rs.45,00,000/- from A.M.Thameem and he was holding the said amount for the purpose of investment for the Plaintiff in India. Believing the representations of the Defendants, the Plaintiff had executed a Power of Attorney dated 16.6.2011 in favour of the 2nd Defendant, registered as Document No.753 of 2011, on the file of the Sub Registrar, Tambaram. The Plaintiff had also executed another Power of Attorney dated 17.6.2011 in favour of the 1st Defendant, in respect of the property at Vaniyambadi.

c. The Plaintiff arranged for sight seeing tour for the Defendants in USA on her own expenses. Thereafter, the Plaintiff had sent various amounts to the 1st Defendant for investment in Chennai through her Bank Account No.961675006. Even during her visit to Chennai, she had given various amounts by withdrawing from the Bank. In 2011, the Defendants 1 and 2 informed the Plaintiff that they had entered into a sale agreement, by paying an advance sale consideration of Rs.5 lakhs, for purchase of the Temple Property at Guduvancherry and that since there was impediment for effecting sale transaction, necessary sanction had to be obtained from the Court, for which they had filed OP.No.212 of 2011 on the file of the Principal District Court at Chengalput. For the said purposes, the Plaintiff had given various amounts to them. Thereafter, the Defendants had stated that they had obtained permission from the court for the said sale transaction and the sale price was fixed at Rs.53,40,000/- and that the sale deed would be registered in favour of the Plaintiff. The Plaintiff had also put signatures in various papers in the Sub Registrar Office, Guduvancheri for registration of the above sale transaction in her favour. In 2012, the Defendants had informed that the land was registered

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in her name and they would hand over the sale deed to her. The Defendants also stated that the monies sent by the Plaintiff would be used for investment purposes.

d. When the Plaintiff approached the Defendants for selling a part of the said land for her medical expenses, the Defendants 1 and 2 were not responsible. In December 2012, the Plaintiff, coming to know through her friends that things were not normal, had verified the said sale Trial Court and she found that the sale was not registered in her name, but it was registered in the name of the Defendants 2 to 5 herein under Document No.10343 of 2012. On coming to know that she was cheated, she enquired with the Defendants and they were evasive. Hence, the Plaintiff filed a complaint in CSR.No.217 of 2014 dated 1.6.2014. Since the police authorities represented that it was a case of civil nature, the Plaintiff had sent a legal notice dated 01.6.2014 to the Defendants, calling upon them to repay the sum of Rs.1,52,00,000/- as the Defendants had obtained the sale deed for the said property in their names by utilising the money of the Plaintiff. The Defendants had sent a reply dated 11.6.2014, containing false allegations, alleging that the Plaintiff had offered to purchase the said property from the Defendants for an amount of Rs.1,16,00,000/- and the Plaintiff had paid only a sum of Rs.73,85,080/- and a balance of Rs.42,14,920/- was payable and that if the Plaintiff fails to pay the balance sale consideration, the Defendants were prepared to repay the sum of Rs.73,85,080/- received from her towards the said sale transaction.

e. The Plaintiff never offered to purchase the said property from the Defendants for the said sum. The Defendants 1 and 2 suppressed the details of the amounts recovered from A.M.Thameem. The Plaintiff had given a sum of Rs.1,07,00,000/- to the Defendants 1 and 2 over and above the amount of the

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said recovery of Rs.45,00,000/- by the 1st Defendant from A.M.Thameem. Hence, the Defendants 1 and 2 are due and liable to pay a total sum of Rs.1,52,00,000/-. In June 2015, the 1st Defendant gave a cheque bearing No.009898, dated 8.6.2015 for a sum of Rs.5,00,000/- and another cheque bearing No.009899, dated 25.6.2015 for Rs.15,00,000/- towards partial discharge of the claim of the Plaintiff. However, both cheques were dishonoured for want of funds. In view of the above, the Defendants are due and liable to pay a sum of Rs.1,52,00,000/- towards principal and a sum of Rs.33,44,000/- towards the interest from 1.6.2014 at the rate of 12% interest p.a., in all a sum of Rs.1,85,44,000/-

f. In May 2013, the Defendants 1 and 2 represented that the Power of Attorney executed in favour of the 2nd Defendant was no longer required and hence, the Plaintiff had executed a deed of revocation of the Power of Attorney, dated 18.3.2016 and registered as Document No.12 of 2016. However, the Defendants did not return the originals of the deed of Power of Attorney and the deed of revocation of the Power of Attorney to the Plaintiff. The above conduct of the Defendants clearly demonstrates the fact that the Defendants have determined to defraud the Plaintiff and deny the genuine entitlements of the Plaintiff. In such circumstances, this civil suit has been filed for the reliefs as stated above.

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3. Though the Defendants 1 to 4 were served on 2.3.2017 and the 5th Defendant was served on 22.9.2016, no written statement has been filed by the Defendants and hence, the matter was ordered to be listed under the caption of "Undefended Board". Paper publication was also effected. For non filing of the Written Statement, recording of exparte evidence was ordered by this court on 29.6.2017. The Plaintiff has filed the proof affidavit for her chief

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examination and receipt of 15 documents as documentary evidence to prove the suit claim. In the Evidence, the Plaintiff examined himself as PW.1 and marked Exs.P1 to P15 as documentary evidence in order to prove the suit claim.

4. Considering the oral and documentary evidence, viz. Ex.P1 to Ex.P15 adduced by PW.1 and in the absence of rebuttal evidence on the part of the Defendant, , this Court is of the view that the plaintiff has proved the suit claim and hence, the Plaintiff is entitled for the reliefs, as asked for. Accordingly, this civil suit is decreed as prayed for, with costs. Time for payment is three months.

01.09.2017

Index:Yes/No
Web:Yes/No
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1. List of Witnesses Examined on the side of the Plaintiff:-

   1. P.W.1 - Pushpa Lavezzo

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

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S.No	Exhibit	Description	Date
1	Ex.P. 1	Sale deed (registration copy) executed by Ambur Mohamed, Thammeem	12012011
2	Ex.P. 2	Original encumbrance certificate	27012011
3	Ex.P. 3	Certified copy of the general power of attorney executed by the Plaintiff in favour of the second Defendant	16062011
4	Ex.P. 4	Certified copy of the general power of attorney executed by the Plaintiff in favour of the first Defendant	17062011
5	Ex.P. 5	Certified copy of the sale deed executed by the Sri Pudhupalathamman Temple represented by its Trustee N.R.Narayanasami in favour of the Defendant 2 to 5	03092012
6	Ex.P. 6	Certified copy of the deed of revocation of general power of attorney	21052013
7	Ex.P. 7	Original statement of accounts issued by Indian Bank, MLA Hostel, Chennai-2 in respect of account no.961675006	26052014
8	Ex.P. 8	Original acknowledgement of complaint issued to the plaintiff by the Sub Inspector of Police, St.Thomas Mount.	01062014
9	Ex.P. 9	Office copy of the legal notice issued by my advocate to all the defendants.	01062014
10	Ex.P. 10	Original reply notice	11062014
11	Ex.P. 11	Original banker's slip dated 10.6.2015 with dishonoured original cheque dated 8.6.2015	
12	Ex.P. 12	Original banker's slip dated 8.7.2015 with dishonoured original cheque dated 25.6.2015	
13	Ex.P. 13	Original statement of accounts issued by Indian Bank, MLA Hostel, Chennai-2 in respect of account no.961675006	02032016
14	Ex.P. 14	Original registered deed of cancellation of power of attorney	18032016
15	Ex.P. 15	Original encumbrance certificate along with schedule of property	24032016

3. List of Witnesses Examined on the side of the defendants:-
   Nil
4. List of Exhibits Marked on the side of the defendants:-

   Nil

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C.V.KARTHIKEYAN, J.

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