

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.03.2017

PRONOUNCED ON : 04.04.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

C. S.No.101 of 2012

1. G.Arokiasamy
2. A.Jayakumar
3. Ruby
4. A.Selvakumar
5. A.Devakumar
6. A.Santhakumar

...
Vs.

Plaintiffs

G.Srinivasan
Proprietor of NGS Constructions

...

Defendant

For Plaintiffs : Mr.B.Ravi Raja

For Defendants : Mr.V.R.Appaswamee

JUDGMENT

The suit has been laid by the plaintiffs for recovery of money and permanent injunction.

2. The averments contained in the plaint are briefly stated as follows:

The Plaintiffs were the owners of the plaint schedule property and in respect of developing the suit property, a joint venture

agreement dated 29.11.2004 was entered into between the plaintiffs and the defendant and the above said agreement pertains to the construction of the residential flats in the suit property. At the time of the said agreement, a sum of Rs.3,00,000/- was paid to the plaintiffs by the defendant. In terms of the joint venture agreement, the defendant was to build residential flats in the suit property after getting necessary approval from the Government authorities and 60 percent of undivided share of land and built up area of the residential flats were to be allotted to the defendant and the remaining 40 percent of the undivided share of land along with the built up area of the residential flats were to be allotted to the plaintiffs. Further, as per the agreement, the defendant was to hand over the possession of the completed residential flats to the plaintiffs, within 18 months from the date of approval. Accordingly, the plaintiffs, in terms of the joint venture agreement, allowed the defendant to demolish the existing house in the suit property and also executed a general power of attorney empowering the defendant to deal with the suit property. But the defendant had violated the various terms of the joint venture agreement, particularly, clauses 2, 5, 6, 16, 19, 18 and 21, 8, 9 and 11 of the joint venture agreement as detailed in the plaint and mainly, according to the plaintiff, the defendant had constructed 8 residential

flats totally measuring about 4160 sq.ft and had given only one residential flat measuring a built up area of about 520 sq.ft. along with the proportionate undivided share to the plaintiffs and conveyed the remaining 7 flats to the third parties and as per the clause 21 of the joint venture agreement, the valuation of the defendant for the built up area is Rs.1,000/- per sq.ft. and it does not refer to the undivided share of the land and as per the terms of the joint venture agreement, the defendant is also liable to give proper accounts to the plaintiffs periodically and therefore, it is stated that the defendant has breached his undertaking to the plaintiffs and on the other hand, the defendant had levied a false suit in O.S.No.3870/2007 on the file of the City Civil Court, Chennai against the plaintiffs and one M/s.Avani builders with whom the plaintiffs have subsequently entered into an agreement for constructing the residential flats in the second block in the suit property and the above said suit laid by the defendant had been based upon false allegations and the said suit ultimately after contest came to be dismissed and as regards the same, the defendant preferred an appeal in A.S. No.36 of 2011 and on account of the above lis initiated by the defendant, the plaintiff was unable to lay the suit against the defendant for recovery of money as regards the violations committed by the defendant in respect of the joint venture agreement above

mentioned and thus, according to the plaintiffs, the defendant had totally built up 8 flats measuring about 4160 sq.ft. and deducting the flat entrusted to the plaintiffs measuring about 520 sq.ft, however, as per the joint venture agreement, the defendant has to allot 1144 sq.ft. to the plaintiffs and the estimated value of the built up area together with the proportionate undivided share of land worked out at Rs.3,000/- would come to Rs.34,32,000/- and deducting the amount of Rs.6,00,000/- already received by the plaintiffs from the defendant, it is stated that the defendant is liable to pay a sum of Rs.28,32,000/- and hence, according to the plaintiffs, they had laid the suit against the defendant for the appropriate reliefs.

3. The averments contained in the written statement filed by the defendant are briefly stated as follows:

The suit is not maintainable either in law or on facts. The entering of the joint venture agreement between the plaintiffs and the defendant with reference to the suit property as claimed in the plaint is not disputed. However, it is false to state that the defendant had violated the various terms of the agreement as narrated in the plaint. The defendant had not violated any terms of the joint venture agreement and the same has been detailed in the written statement.

As per the joint venture agreement, the property was to be divided into two blocks and by spending huge amount, the defendant obtained approval and permission from the authorities concerned and completed the construction in the first block with the built up area of about 2933 sq.ft. and the plaintiff, as per the joint venture agreement, is entitled to 40% share in respect to the same, which works out to 1173 sq.ft and the plaintiffs had been already entrusted one flat measuring 525 sq.ft. of built up area and the balance area measuring 648 sq.ft. had been adjusted with the sum of Rs.6,75,000/- already received by the plaintiffs as per the various clauses of the joint venture agreement. As regards the second phase of the construction is concerned, the plaintiffs insisted to stop the work and planned to continue the said work with another builder and accordingly, refused to execute further power of attorney in favour of the defendant and accordingly, the defendant was necessitated to approach the City Civil Court for appropriate reliefs. It is false to state that the defendant is liable to pay the suit amount to the plaintiffs. Inasmuch as no amount is due from the defendant to the plaintiffs and only on account of the same, the plaintiffs have not claimed any amount from the defendant for the past 10 years after the construction work had been completed in the first block and the plaintiffs have also not sent any pre-suit notice

claiming any amount from the defendant. It is false to state that the defendant had put up construction in the first block measuring about 4160sq.ft. The total constructed area in the first block is only 2933 sq.ft. and it is false to state that the share of the built up area would be adjusted at Rs.3,000/- per sq.ft. As per the agreement, the share of the built up area has to be adjusted as only Rs.1000/- per sq.ft. The plaintiffs had engaged another builders by name Sakkravarthi Builders for engaging further construction in the suit property and accordingly, the defendant sent a notice dated 28.11.2011 and as a counter blast to the same and to harass the defendant, the present suit has been laid by the plaintiffs with false allegations. The suit laid by the plaintiffs is barred by limitation. The plaintiffs have not come forward with the suit in time and hence, the suit is liable to be dismissed.

4. On the basis of the above pleadings, the following issues are framed for determination:

" 1. Whether the alleged violations of the joint venture agreement dated 29.11.2004 by the defendant is true?

2. Whether the plaintiff can be non-suited on the ground of limitation when admittedly the defendant had instituted O.S.No.3870/2007 and subsequently A.S.No.36 of 2011?

3. Whether the findings rendered in O.S.No.3870 of 2007 and A.S.No.36 of 2011 are not binding on the parties herein?

4. Whether the plaintiffs are entitled for suit claim without any demand notice from the beginning of dispute till the filing of the suit?

5. Whether the plaintiffs are entitled for permanent injunction against the defendant?"

5. In support of the plaintiffs' case, PW1 has been examined and Exs.P1 to P20 were marked. On the side of the defendant, DW1 has been examined and no documents has been marked.

6. ISSUE NO.1

It is not in dispute that in respect of the development of the suit property belonging to the plaintiffs, a joint venture agreement had

been entered into between the plaintiffs and the defendant on 29.11.2004 and the copy of the same has been marked as Ex.P1. Pursuant to the same, it is also found that the defendant had put up construction in the first block of the suit property i.e. 8 residential flats and it is not in dispute that one flat had been entrusted to the plaintiffs measuring about 525 sq.ft. along with the undivided share of the common land. The joint venture agreement Ex.P1 postulates that on completing the construction of the flats, 40% of the undivided share of the land along with the built up area of the residential flats should be allotted to the plaintiffs and the remaining 60% of the undivided share of the land along with the built up area are to be taken by the defendant. As regards the above clauses, there is no dispute. Mainly complaining about the violations of the above said clauses, it is found that the plaintiffs have laid the present suit. In such view of the matter, it is unnecessary to deal with the other alleged violations said to have been committed by the defendant in respect of the joint venture agreement, particularly, when the plaintiffs' suit for recovery of money amounting to Rs.28,32,000/- pertains only to the said violations.

7. It is not in dispute that the defendant had paid the plaintiffs a sum of Rs.6,00,000/-. As adverted to earlier, it is also not in dispute that the plaintiffs had been entrusted one flat of a built up area about 520 sq.ft. Now, according to the plaintiffs, in the first block of the property, the defendant had constructed 8 flats measuring about 4160 sq.ft, but the same is controverted by the defendant. According to the defendant, the construction put up in the first block consisting of 8 flats measures only 2933 sq.ft. and not 4160 sq.ft. as put forth by plaintiffs. It has to be therefore first determined as to what is the actual measurement of the construction put up by the defendant in the first block. In other words, what is the total construction area of the 8 flats put up by the defendant.

8. The plaintiffs having come forward with the suit that the defendant had put up 8 flats measuring 4160 sq.ft. and the defendant having repudiated the same and contending that only 2933 sq.ft. alone had been constructed in the first block, as rightly contended, it is for the plaintiffs to establish that the 8 flats constructed by the defendant in the first block measures about 4160 sq.ft. as claimed. In this regard, as rightly put forth by the defendant's counsel, the plaintiffs have not taken any steps to produce any engineer's report to show

that the extent of the construction put up by the defendant in the first block measures 4160 sq.ft. as claimed by them or only 2933 sq.ft. as put forth by the defendant. No engineer has been examined on the said of the plaintiffs and therefore, it could be seen that without any material as such, the plaintiffs have come forward with the case that the defendant had put up the construction of 8 flats measuring about 4160.ft.. In this connection, PW1 during the course of cross examination has stated that he does not know whether he has filed any document to show that the defendant had constructed 4200 sq.ft. and when he was confronted the document produced by him, in support of his case, he would only state that he does not know out of the documents filed by him, which document point to the said fact and he has also admitted that he has not filed any engineer's report in respect of 4200 sq.ft. constructed by the defendant. In such view of the evidence of PW1, in the absence of any material, to hold that the actual construction of the 8 flats measures 4160 sq.ft., the case of the plaintiffs that the defendant, as per the joint venture agreement, is liable to entrust 1664 sq.ft. as such cannot be accepted straight away. In this connection, it is also contended by the defendant that as regards the EB connection and sewage connection with reference to the flat entrusted to the plaintiffs, they have paid the necessary

charges to the Government and deducted the same, according to the defendant, they are not liable to pay any amount to the plaintiffs. In this connection, PW1 has admitted that he does not know as to whether the defendant has paid charges to get the EB connection and sewage connection for the flat given to him. However, he would claim that the plaintiffs have paid the EB charges and sewage connection charges to the flat given to them, but would admit that they have not filed any document to show that they have paid and obtained the EB charges and sewage connection to the said flat and finally admitted that they did not pay any amount for the EB connection and sewage connection for the flat and it only, the builder i.e. the defendant, who had paid the amount for EB charges and sewage connection also for the said flat. Therefore, it could be seen that the charges incurred by the defendant for obtaining the EB connection and sewage connection to the flat given to the plaintiffs should also be deducted as per the terms of the joint venture agreement.

9. The plaintiffs have valued the suit amount on the basis that the value of 1 sq.ft works to Rs.3,000/-. However, as regards the above claim of the plaintiffs, there is no material forthcoming. According to the defendant, the rate of 1 sq.ft. as per the agreement is

quantified at Rs.1,000/-. In this connection, PW1, during the course of his evidence, has admitted that they have claimed Rs.3,000/- per sq.ft. in the plaint and they do not have any agreement with the defendant to claim Rs.3,000/- per sq.ft. as mentioned in the plaint and further, he has also admitted that they have claimed Rs.3,000/- per sq.ft. from the Chakkravarthi Construction and not with the defendant. Again, he would reiterate that he had claimed Rs.3000/-per sq.ft from the defendant and would add that the claim of Rs.3,000/- per sq.ft. in the plaint is the prevailing rate on the date of the filing of the suit and also, further admitted that there is no agreement to claim the said prevailing rate. Therefore, it could be seen that when there is no basis for the plaintiffs to value the area of 1 sq.ft. at Rs.3,000/- with the defendant, the case of the plaintiff that the defendant is liable to pay the suit amount to them at the rate of Rs.3,000/- per sq.ft. as such cannot be accepted. It has not been pointed out that the joint venture agreement Ex.P1 provides for such a rate to be worked out between the parties.

10. As adverted to earlier, it is not in dispute that the plaintiffs have totally received of a sum of Rs.6,00,000/- from the defendant. This has been clearly admitted by PW1. Therefore, it could be seen

that the plaintiffs have not established that the defendant has put up 8 flats measuring about 4160 sq.ft. It has to be held that as claimed by the defendant, the 8 flats put up by them works out to 2933 sq.ft. alone. Similarly, when there is no agreement between the parties to value the area of 1 sq.ft. at Rs.3,000/-, it could be seen that as per the agreement, the area of 1 sq.ft. has to be worked out only at the rate of Rs.1,000/-. Now, according to the defendant, they have spent about Rs.75,000/- towards the EB charges and property tax and other charges as regards the flat given to the plaintiffs. Therefore, it could be seen that out of 2933 sq.ft. of construction put up by the defendant, as per the joint venture agreement, the defendant is liable only to allot 1173 sq.ft. to the plaintiffs, being 40% of the constructed area. The defendant had already entrusted one flat measuring about 520 sq.ft. Admittedly, the plaintiffs have received Rs.6,00,000/- from the defendant. It is also the case of the defendant that a sum of Rs.75,000/- had been spent by them towards the charges for the various amenities fitted in the flat entrusted to the plaintiff. In toto, it could be seen that a sum of Rs.6,75,000/- has been spent by the defendant or received by the plaintiffs from the defendant and if the same is worked out at Rs.1,000 per sq.ft., it could be seen that the said amount works out to 675 sq.ft. and adding 520 sq.ft. with 675

sq.ft., it could be seen that the total constructed area would amount to 1195 sq.ft. As seen above, the defendant is liable to entrust only 1173 sq.ft. to the plaintiffs being 40% of the constructed area put up by them. Therefore, it could be seen that the claim of the plaintiffs that the defendant is liable to entrust 1664 sq.ft. out of 4160 sq.ft. as such cannot be accepted. Similarly, the valuation of the plaintiffs of 1144 sq.ft. (1664-520) at the rate of Rs.3,000/- also cannot be accepted. In other words, it is found that the claim of the plaintiffs ultimately in a sum of Rs.28,32,000/- being the value of 40% of the construction area from the defendant is unsustainable both on facts and in Law.

11. In the light of the above discussions, I hold that the defendant has not committed any violation of the joint venture agreement Ex.P1 as put forth by the plaintiffs and accordingly, issue no.1 is answered.

12. Issue nos.2 to 4

It is the specific case of the defendant that the suit laid by the plaintiffs is barred by limitation. According to the plaintiffs, the defendant is liable to pay a sum of Rs.28,32,000/- towards the value of 40% of the constructed area. It is seen that the defendant has completed the construction in the first block in the year 2006 itself and

complaining about the violations of the joint venture agreement, the suit has come to be laid by the plaintiff in the year 2012. The agreement had been entered into between the parties on 29.11.2004. If really, the defendant had violated the terms of the joint venture agreement, as rightly contended by the defendant's counsel, the plaintiffs immediately after the construction put up in the first block would have taken adequate steps to recover the amount due to them from the defendant in the manner known to law. In this connection, PW1 has admitted that the defendant had completed the construction in the year 2006 and they have filed the present suit only in the year 2012. Further, though he would claim that after 2006, they had issued notice to the defendant and the same had not been received by the defendant, later, he has admitted that he does not know whether any notice had been issued by them and whether the same had been refused by the defendant. Further, he has also admitted that he has not filed the legal notice sent to the defendant nor filed any returned cover in the Court and also admitted that he does not know whether anywhere in the plaint or proof affidavit he has stated about having sent the notice to the defendant for claiming the amount. He has also admitted that prior to 2012, he has filed any case against the defendant either in the High Court or in the City Civil Court.

Therefore, it could be seen that when according to the plaintiffs, they have laid a suit for recovery of the amount on the footing that the defendant had violated the various clauses in the agreement, particularly, not entrusted the 40% of the constructed area, which had been admittedly completed in the year 2006, it could be seen that if any such violation had been really committed by the defendant as claimed by the plaintiffs, the plaintiffs should have laid the suit for the recovery of the amount pertaining thereto within the time allowed by Law. When the cause of action for the suit for the recovery of the amount has arisen in the year 2006 itself, the suit laid by the plaintiffs in the year 2012 is found to be clearly hit by the Law of Limitation.

13. In this connection, it is argued by the plaintiffs' counsel that on account of the suit laid by the defendant in O.S.No.3870/2007 on the file of the City Civil Court, the plaintiffs were unable to initiate any action against the defendant for the recovery of the amount. Further, according to the plaintiffs' counsel, even after the dismissal of the said suit, inasmuch as the defendant preferred an appeal against the same, the plaintiffs could not institute the lis immediately. However, the claim of the plaintiffs that on account of the pendency of the suit in O.S.No.3870/2007 and A.S.No.36/2011, they were

prevented from laying the suit for recovery of money from the defendant on the ground of violations of the joint venture agreement, as such, cannot be accepted. It does not stand to reason as to how the above said lis filed by the defendant would be a bar to the plaintiffs from claiming the necessary reliefs sought for in this suit. As rightly contended by the defendant's counsel, if really, the defendant is liable to pay any amount to the plaintiff on account of the violations of the joint venture agreement, nothing prevented the plaintiffs from making a counter claim, at least, in the suit laid by the defendant in O.S.No.3870/2007. On the other hand, when it is found that the right from 2006 till 2012, the plaintiffs having not moved their little finger for initiating the lis against the defendant, their present theory that on account of the suit laid by the defendant in the City Civil Court, they were prevented from laying the lis, is found to be untenable in the eyes of Law. It is thus found that the suit laid by the plaintiffs is clearly hit by the law of limitation.

14. In the light of the above discussions, I hold that the suit laid by the defendant in O.S.No.3870/2007 and subsequently, A.S.No.36/2011 had not operated as any legal bar for laying the suit by the plaintiffs against the defendant and I therefore hold that the

present suit laid by the plaintiffs is hit by law of limitation. Inasmuch as no amount is due from the defendant to the plaintiffs after the completion of the construction in the first block of the suit property, it could be seen that the plaintiffs have also not demanded any amount from the defendant by sending a legal notice and accordingly, it is found that no pre suit notice has also been given by the plaintiffs before laying this present suit. Accordingly, issue nos.2 to 4 are answered against the plaintiffs.

15. Issue No.5

As regards the relief for permanent injunction sought for by the plaintiffs, it is now admitted that the plaintiffs have entrusted the construction work in the remaining block to another builder and no material has also been placed by the plaintiffs to show that the defendant had interfered with any construction, as such, in the second block of the suit property and in such view of the matter, as rightly contended by the defendant's counsel, the relief of permanent injunction also cannot be granted in favour of the plaintiffs in the absence of any foundation having been made for the same by the plaintiffs. Accordingly, issue Nos.5 is also answered against the plaintiffs.

In conclusion, the suit is dismissed with cost.

Index : Yes/No
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04.04.2017

T.RAVINDRAN,J.

sms

Pre-delivery Judgment in
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