IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2017

PRONOUNCED ON : 22.11.2019

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CS.Nos.497 of 1998 and 558 of 1999

CS.No.497 of 1998

M.G.Sivaraman .. Plaintiff

vs.

1.M/s.Landmark Constructions
Rep by its
Managing Partner
No.12, Venkatakrishna Road,
Mandaveli, Chennai-28.

2.U.Naresh (deceased)

3.T.Umapathy
All residing at
No.12, Venkatakrishna Road,
Mandaveli, Chennai -28.

4.Mrs.Hemalatha Manohar

5.Mrs.S.Sarada Naresh

6.Miss.N.Karpagam

7.Mrs.Dakshayani Umapathy
(defendants 5 to 7 impleaded as LRs of the deceased second defendant as per oder dated 08.09.2009 made in A.No.4447 of 2009)

8.L.Manohar ..Defendants

PRAYER : Civil suit is filed under Order IV, Rule 1 of OS Rules r/w. Order VII Rule 1 of CPC

(a)Directing the defendant Nos.1 to 3 to pay a sum of Rs.26,12,500/- together with interest at the rate of 18%p.a. from the date of plaint till the date of realization (or) in the alternative directing the defendants to handover the Flat No.7, morefully described in the suit schedule herein with payment of sum of Rs.10,37,500/- together with interest at the rate of 18% from the date of plaint till the date of realization to the plaintiff.

(b)Granting an order of permanent injunction restraining the defendants 1 to 4, their men, agents etc from in any way alienating or encumbering the suit property i.e, Flat No.7, morefully described in the schedule hereunder.

(c)Directing to pay the costs of the suit to the plaintiff (and)

(d)Granting such further or other reliefs as this Court may deem fit and proper in the circumstances of the case and thus render justice.

CS.No.558 of 1999

1.M/s.Landmark Constructions
Rep by its Partners
(a)U.Mahesh
(b)Mrs.U.Dhakshayani
No.12, Venkatakrishnan Road,
Mandaveli, Chennai-28.

2.Tmt.Sarada Naresh

3.Selvi.Karpagam Naresh

4.Mrs.U.Dhakshayani
(plaintiffs 2 to 4 are residing at New No.8, Old No.100,
3rd Street, Karpagam Avenue, Raja Annamalaipuram
Chennai-28)

(Amended as per order dated 27.04.2010
vide A.Nos.2000 and 2125 of 2010)
(3rd defendant declared as major and 2nd defendant
discharged from the guardianship by order
dated 12.08.2015 vide A.Nos.5236 and 5237 of 2015)

... Plaintiffs

vs.

M.G.Sivaraman .. Defendant

PRAYER : Civil suit is filed under Order IV, Rule 1 of OS Rules r/w. Order VII Rule 1 of CPC directing the defendant

(a)to execute a sale deed in favour of plaintiff's nominee Mr.Manohar L.Lakshmanan of the undivided share of land for Flat No.7 morefully described in the schedule hereunder and also to admit such execution before Sub Registrar, Mylapore and present the deed for registration and in the event of the defendant failing to execute the sale deed in favour of the said Mr.Manohar L.Lakshmanan, the Court may depute one of its officers to execute the Deed of sale and present the same for registration before Sub Registrar, Mylapore for and on behalf of the defendant.

(b)to pay the plaintiff a sum of Rs.6,00,000/- as damage for causing monetary loss and causing pain and mental agony and for loss of reputation (and)

(c) Costs of the suit.

(d) Granting such further or other reliefs as this Court may deem fit and proper in the circumstances of the case.

For Plaintiffs : M/s.Chitra Sampath, SC
for Mr.T.S.Baskaran
plaintiff in CS.No.497 of 1998
and for defendant in
CS.No.558 of 1999.

For Defendants : Mr.N.C.Ramesh, SC
for Mr.T.Siva Prakasam
D1 to D7 in CS.No.497 of 1998
and for plaintiff in
CS.No.558 of 1999
Mr.C.Umashankar,
for 8th defendant in CS.No.497 of 1998

COMMON JUDGMENT

CS.No.497 of 1998

The civil suit is filed by the plaintiff for recovery of money or possession and permanent injunction.

2 The gist of the plaint filed by the plaintiff is as follows :-

The plaintiff states that he is the absolute owner of the land situated at No.59, (Old.No.56/A), 2nd street, Karpagam Avenue, Chennai-28, the plaintiff was in occupation for a period of 15years. The extent of plot is 1.8 grounds or 4473.6sq.ft. The first defendant is partnership firm, 2nd defendant is son of third defendant and 3rd defendant is family friend of the plaintiff. The second defendant is the managing partner and the 3rd defendant is the partner in the first defendant firm and had been carrying on business of building construction and promoting flats. During 1992-1993, the plaintiff permitted the defendants 2 and 3 to use the vacant space available in his plot for carrying on carpentry work for the flats that were being constructed by the second defendant.

3 The second defendant taking advantage of close and cordial relationship with the plaintiff, influenced the plaintiff to join with him in the business of construction and promotion of flats. The plaintiff initially was not interested and defendants 2 and 3 kept on pressuring the plaintiff and promised him for constructing a decent and dwelling flat and also lucrative terms and the plaintiff was unaware of the projects lured into the same by the second and third defendants. The original arrangement between the plaintiff and the defendants 1 and 2 was to construct a total plinth area of 6750sq.ft out of which 60% is to be allotted to the plaintiff and 40% is to be sold to the third parties by the second defendant. The plaintiff wanted 2000sq.ft for his own use and disposal of the balance 2050sq.ft is to be decided by later by the plaintiff. It is further agreed between the parties if any construction put up by the second defendant over and and above 6750sq.ft, the sale proceeds will be shared equally i.e, 50:50 basis.

4 Due to cordial relationship between the parties, some terms were not extracted into a form of agreement and in good faith, the plaintiff executed a general power of attorney in favour of the second defendant dated 12.12.1994 vide Doc.No.1010 of 1994 on the file of the Sub Registrar, Mylapore. The power of attorney has been executed for the purpose of putting up a construction and to do all other acts that are necessary for constructing the flats and at the time of executing the power of attorney, the second defendant has not paid any consideration to the plaintiff. Within a period of 18 to 20 months, the defendants 1 and 2 constructed 7 flats having actual plinth area of about 7300sq.ft. During October 1996, the plaintiff was put into possession of flat bearing Nos.4 and 2 having an extent of 1050sq.ft and 950sq.ft respectively. The second defendant has sold the undivided share of land to various parties by virtue of general power of attorney dated 12.12.1994 from June 1995 to December 1995 and seems to have received a total consideration of Rs.15,40,000/- as found in the registered documents on this account. The second defendant constructed 7 flats out of which two flats were given to the plaintiff and four flats were sold to parties closely associated to the defendants 2 and 3 and Flat No.7 is still kept vacant, it is seen that the promoter/builder the second defendant with the aid of the power of attorney has been negotiating and selling the flats, at no point of time the details of the sale was made known to the plaintiff. No advertisement was ever made for the sale of four flats and the plaintiff had to accept the words of the 2nd defendant about the said proceeds for which the accounts were not submitted till now.

5 The plaintiff states that though initially the 2nd defendant was promising, lucrative terms, after some time he started to show the true colour and did not keep up his promise. The second defendant from the beginning of the contract made the following promises :-

a)Total plinth area of about 6750sq.ft will be constructed out of which 60% i.e, 4050 sq.ft will be given to the plaintiff.

b)the 2nd defendant is entitled to sell the remaining 40% of the plinth area, i.e, 2700sq.ft to the third parties.

c)the basic rate of construction per sq.ft will be Rs.1,200/- and if the sale price is over and above the basic rate, the excess amount will be shared between the plaintiff and the second defendant on 60:40 proportionate basis.

d)it was also agreed that the 2nd defendant constructs more than 6750sq.ft the parties will share the sale proceeds of the excess plinth area equally i.e, 50:50 proportionate basis.

e)all amenities will be provided without any extra cost for the area to be used by the plaintiff for his own use.

6 The plaintiff revoked the power of attorney on 30.09.1996 by deed of revocation registered as Document No.867/1996, since the second defendant has not acted upon the oral agreement. Despite several letters, the 2nd defendant was not handing over the Flat No.7, nor has paid any money towards the above said account. The second defendant instead of giving correct details of share, issued a cheque for Rs.70,659.67 dated 09.01.1997 purporting to be a final settlement of accounts claimed by the plaintiff. The plaintiff denied the fact that a sum of Rs.4,62,145/- alleged to have been the amount incurred for the extra amenities and in fact the second defendant has specifically agreed that the additional items will be provided to the plaintiff's portion without charging any extra cost. The second defendant issued a letter dated 09.01.1997 giving incorrect and false statement to suit his convenience, enclosing a cheque for a sum of Rs.70,654.67. The said letter was replied suitably by the plaintiff on

19.02.1997 and the said cheque was not encashed. While so, on 08.06.1997, the second defendant had advertised for sale of Flat No.7 and the said advertisement was made without any authority, since the plaintiff had already revoked the power of attorney on 30.09.1996 by registered document. The plaintiff submits that Flat No.7 has been constructed and made ready for occupation,but, the second defendant has keeping it vacant and the plaintiff is deprived of the rental income for the same.

7 In the meanwhile, the second defendant issued a notice dated 17.03.1998 calling upon the plaintiff to execute a fresh deed to sell the Flat No.7. The contents of the notice dated 17.03.1998 was contrary to the earlier understanding and the plaintiff was constrained to issue reply notice dated 29.03.1998 setting out the correct facts and claiming Rs.46,10,000/- or in alternative for payment of Rs.25,10,000/- and handing over of the said Flat No.7 morefully described in the schedule. The said value was arrived by working out at the rate of Rs.2000/-per sq.ft and now the plaintiff is claiming a sum of Rs.26,12,500/- on the basis of Rs.1,500/-per sq.ft as admitted by the 2nd defendant in the earlier correspondence.

8 The plaintiff further submits that 4th defendant is sister of the second defendant and daughter of the 3rd defendant to whom

Flat No.5, with an extent of about 500sq.ft has been sold and she is in possession of the same. Since the plaintiff, issued a reply dated 28.03.1998, asking for possession and handing over the Flat No.7, the defendants 2 and 3 are instigating the 4th defendant to be in possession and the 4th defendant is trying to encroach upon the Flat No.7. Flat No.7 is situated just opposite to Flat No.5, where the defendants 2, 3 and 4 are colluding to defraud the legitimate right of the plaintiff. The plaintiff is therefore constrained to file the above suit for recovery of sum of Rs.26,12,500/- being the value of the share or in alternative handing over the Flat No.7, morefully described in the schedule herein together with the payment of Rs.10,37,500/- and also for an order of permanent injunction restraining the defendants herein from alienating or encumbering the suit Flat No.7.

9 The gist of the written statement filed by the Defendants 1 & 2 is as follows :-

The defendants 1 and 2 has stated that the suit is not maintainable for misjoinder of parties. The defendants submit till date the plaintiff has not produced copy of patta for his property, despite several reminders sent by these defendants. The second defendant was not interested in promoting the plaintiff's property for two reasons, the size of the plot was not convenient for such promotion of flats and it was not suitable for constructing flats and sell the same at the relevant time. It was the plaintiff who pleaded with the 2nd defendant several times for promoting flats in his property and on his request only the 2nd defendant sent a draft agreement to the plaintiff to approve and sign the agreement. This draft agreement formed the basis of oral understanding/agreement arrived between the plaintiff and second defendant and the plaintiff did not raise any objections on the contents of the agreement. In the draft agreement sent by the second defendant, it was mentioned that total built up area was of 6700 sq.ft subject to approval and sanction by the competent authorities and the plaintiff has to agree for selling the undivided share of land to the prospective buyers of the residential flats. The plaintiff was to be given 2000 sq.ft residential flat and Rs.17.5lakhs (1750 sq.ft) as sale consideration for the remaining undivided share of property. The plaintiff was paid more than what was due to him, out of 6750sq.ft to be constructed, 3750sq.ft has to given to the plaintiff and the balance of 3000sq.ft to be taken by the defendant. As admitted by the plaintiff in the plaint itself, he had taken 2000sq.ft viz Flat no.2 measuring 950 sq.ft. And Flat no.4 measuring 1050 sq.ft. and at the rate of Rs.1000/- for 1750sq.ft., the defendants paid him Rs.17.5lakhs. These defendants have also paid additional sum of Rs.2,16,845.30 to the plaintiff as per statements of accounts sent by the defendants dated 20.06.1996 and 09.01.1997 to the plaintiff. These defendants submits that there was no proposal or agreement at any time to share at the ratio of 60:40 between the plaintiff and these defendants. These defendants having invested borrowed funds, were trying to sell the flat No.7 atleast at Rs.2000/-per sq.ft. The defendants submit that in order to pressurise and coerce the defendants, the plaintiff deliberately revoked the power of attorney dated 12.12.1994 executed by the plaintiff in favour of the second defendant. The defendants trusted the plaintiff blindly and invested huge sum of money in providing deluxe flats and ultimately ended up in loss. The defendants reserve their right to file a separate suit against the plaintiff for loss and damages and also for mental agony and for mandatory injunction directing him to execute the power of attorney in favour of the 2nd defendant enabling him, to execute the sale deed for the undivided share in Flat No.7. It is not out of place to mention that the plaintiff wanted several alterations, additions and extra items for his two flats which these defendants have complied with immediately for the value of Rs.5,66,845/- and the plaintiff is duty bound to reimburse the same to these defendants. In view of cancelling the power of attorney by the plaintiff, the defendants were unable to sell the Flat No.7 and in fact the Corporation of Chennai had assessed the said flat to property tax in the name of the 2nd defendant as a person in possession of Flat No.7. The plaintiff was aware of each and every development from day one as to what was happening at the construction site as well as in the 1st defendant office.

10 The defendants were not able to sell Flat No.7 as originally contemplated, the defendants were hard pressed for money, Mr.Manohar Mr.L.Lakshman have agreed to buy the flat for Rs.16.00 lakhs and had paid a sum of Rs.7.00 lakhs. As per the terms of agreement entered between these defendants and the said Mr.Manohar L.Lakshmanan (husband of the 4th defendant) was put in possession of Flat No.7 from 09.05.1998. Thus the plaintiff has to complete his part of the terms of contract by executing a fresh power of attorney in favour of 2nd defendant to convey the undivided share of land for Flat No.7 in favour of Mr.Manohar L.Lakshmanan without any further consideration. The plaintiff cannot perpetuate his illegal act and conduct by claiming Flat No.7 or more money from these defendants under false pretext. The prayer of the plaintiff for an injunction against these defendants has to be dismissed inasmuch as these defendants have sold and parted with their exclusive possession in favour of Mr.Manokar L.Lakshmanan for valuable consideration, even as early as 09.05.1998 much before the filing of suit. Hence, prays for dismissal of the suit.

11 The gist of the written statement filed by the third defendant is as follows :-

The 3rd defendant has stated that he is not a partner of the first defendant firm and he has been wrongly impleaded as 3rd defendant in the suit. He further states that he is not a necessary party in the suit as no relief can be claimed against him by the plaintiff. The suit has to be dismissed for misjoinder of parties. He further submits that he has no interest over the 1st defendant partnership firm or in the suit matter and therefore the suit may be dismissed as against him as no reliefs can be sought for against him. The 3rd defendant do not wish to traverse in regard to various allegation made in the plaint. The 3rd defendant submits that he is not a owner of Flat No.7 and the question of delivery of vacant possession or payment of any money by him to the plaintiff does not at all arise as there was no privity in any way between him and the plaintiff. Hence, prays for dismissal of the suit.

12 The gist of the written statement filed by 8th defendant is as follows :-

The 8th defendant has also filed his written statement stating that he is a bonafide purchaser of Flat No.7, which is subject property, even prior to filing of the suit and the plaintiff has no title or right over the same. This defendant has been put in possession on 29.04.1998 pursuant to the agreement entered into between 2nd defendant and 8th defendant. The plaintiff did not prove his claim by producing any documents and therefore, he seeks dismissal of the suit. The plaintiff has deliberately suppressed the documents especially Ex.P2 at the time of filing of suit. The plaintiff has developed his case stage by stage and matrial facts were not pleaded. To support his contentions, the learned counsel appearing for 8th defendant has relied on the decisions reported in the following cases.

1. AIR 1971 Madras 198 (Mariappa Thevar vs. Kaliammal)
2. AIR 1998 Kerala 253 (Mathew vs. Scaria and another)
3. 2006(4) CTC 805 (FB) (B.Suresh Chand vs. State of Tamilnadu)
4. 2008(7) SCC 310 (Mohammadia Cooperative Building Society Limited vs. Lakshmi Srinivasa Cooperative Building Society Limited and others)
5. 2010 (8) SCC 383 (Meghmala and others vs. G.Narasimha Reddy and others)
6. 2012 (11) SCC 574 (Badami (deceased) by Her.LR vs. Bhali)
7. 2013 (11) SCC 531 (Bhaskar Laxman Jadhav and others vs. Karamveer Kakasaheb Wagh Education Society and others)

<u>CS.No.558 of 1999</u>

13 The brief facts of the case of the plaintiffs in C.S.No.558 of 1999 are as follows:-

The plaintiffs are one of the reputed Civil Engineers and Contractors. The defendant, who knows Mr.T.Umapathy, father of Mr.U.Naresh, Managing Partner and consultant of the plaintiff, approached the plaintiffs to develop his residential property into residential flats. Originally, there was a proposal to construct 6700 sq.ft as the plot measured 1.8 grounds, equivalent to 4473 sq.ft, and the same was not in proper shape. The plaintiff sent a draft agreement to the defendant containing the details of area to be built viz., 6700 sq.ft subject to approval by plan sanctioning authorities. The draft agreement also contained a clause, permitting the plaintiff to demolish the existing building and the defendant would be given 2000 sq.ft built up area ad also Rs.17,50,000/- and also similar clauses that are necessary for completion of the same. The defendant was postponing the signing of the agreement, but did not raise any objection on the contents of the draft agreement.

14 The defendant executed a Power of Attorney dated 12.12.1994 registered as Doc. No.1010 of 1994 in the office of the Sub-Registrar, Mylapore, appointing the second plaintiff, Managing Partner of the first plaintiff partnership firm as his Power Agent, which contained necessary clauses that are necessary for getting the plan sanctioned and also to negotiate with prospective buyers of the flats excluding the undivided share of land to an extent of 2100 sq.ft retained by the defendant. The plaintiff constructed three floors consisting of 7 flats and the defendant was given two flats, one in the ground floor measuring 1000 sq.ft and the other in the first floor measuring 1150 sq.ft., thus the defendant was given two flats measuring 2150 sq.ft as agreed and was also paid a sum of Rs.19,66,845.33 in full and final settlement as per the statement of accounts dated 20.06.1996 and 09.01.1997 sent by the plaintiffs to the defendant along with a cheque dated 09.01.1997 for a sum of Rs.70,654.67.

15 Since the flats constructed were of deluxe category, the basic envisaged price at Rs.1,000/- rose upto nearly Rs.1,500/- per sq.ft. The buyers were not willing to pay more than Rs.1,300/- per sq.ft, and hence the plaintiff lost nearly Rs.200/- per sq.ft in the four flats that were sold and other than defendant's only one flat i.e., Flat No.7 measuring 1150 sq.ft in the second floor, remained unsold and unless the same was sold at Rs.2,000/- per sq.ft. the plaintiff could end up in heavy monetary loss.

16 While so, the defendant arbitrarily cancelled the Power of Attorney dated 12.12.1994 executed by him in favour of the second plaintiff. The plaintiffs wanted the defendant to execute a fresh Power of Attorney so as to enable the plaintiffs to sell the Flat No.7 at an earlier date. But the defendant was evading and thus, the plaintiff's money had been locked up due to illegal act and conduct of the defendant. Hence, the plaintiff issued lawyer's notice dated 17.03.1998 to the defendant calling upon him to execute a fresh Power of Attorney so as to enable the plaintiffs to complete the entire transaction. The defendant sent a reply dated 28.03.1998 raising untenable contentions, contrary to what was originally agreed upon.

17 The defendant and the purchasers of flat were put in possession even in the middle of 1996 and all the flats were assessed by the Corporation Authorities, for property tax, including flat No.7, which is in possession of the plaintiff. Flat No.7 was assessed in the name of the plaintiff and the plaintiff has right to negotiate to sell the same. Ultimately Mr.Manohar L.Lakshmanan, brother-in-law of the plaintiff agreed to purchase Flat No.7 and out of sale consideration of Rs.16,00,000/- so far, he has paid a sum of Rs.9,00,000/- to the plaintiff and he was put in possession of Flat No.7 on 09.05.1998. Out of sheer greed, the defendant filed a suit in C.S.No.497 of 1998 against the plaintiff for recovery of Rs.26,12,000/- from the plaintiff, wherein the plaintiff has also filed a written statement. In fact, no amount is due by this plaintiff to the defendant.

18 The defendant had got 2150 sq.ft of newly built deluxe flats (2 flats) and also cash consideration for giving up his right over his remaining share of built up area viz., 3700 sq.ft – 2000 sq.ft – 1700 sq.ft and the plaintiff was entitled to sell 3000 sq.ft built up area. Out of the plaintiff's share of constructed area of 3000 sq.ft., a flat measuring about 1150 sq.ft in the second floor remained unsold. The defendant, neither in law nor on facts, has any right, title, interest over the constructed Flat No.7. Since the defendant had maliciously cancelled the Power of Attorney dated 12.12.1994, the plaintiff was not able to sell and register the undivided share of land of Flat No.7. Hence, the plaintiff has filed this suit, on the basis of Contract and on Principles of Equity to protect his interest and also of the buyer of Flat No.7.

19 The case of the defendant in C.S.No.558 of 1999, in brief, as averred in his Written Statement, is as follows:-

The second plaintiff's father and the defendant are known to each other for a number of years. The plaintiff's partner, Mr.U.Naresh, Son of Mr.T.Umapathy, approached this defendant through his father and proposed to develop the suit property, measuring 1.864 grounds. The original arrangement promised by the plaintiff and his partner, Mr.U.Naresh was that they would construct a total plinth area of 6750 sq.ft., at a total cost of Rs.30 lakhs based on Rs.450/- per sq.ft., out of which 60% will be allotted to the defendant and the remaining 40% will be sold to third parties by the plaintiff. This defendant wanted 2000sq.ft for his own use on the ground floor and the balance 2050 sq.ft., being the share of the defendant was agreed to be dealt with latter. The plaintiff was to recover his cost of construction from the sale of 2700 sq.ft at Rs.1200/- per sq.ft. It is further agreed between the parties that if the plaintiff was able to sell the same for a higher price beyond Rs.1200/-, the difference was to be shared between the plaintiff and the defendant on 60:40 basis. It is also mutually agreed between the parties that if any construction area in excess of 6750sq.ft, the same would be shared equally i.e, 50:50 basis. All additional amenities for defendant's flats will be provided without any extra cost. This defendant never agreed to bear the extra expenditure for the alleged amenities to be provided in common. It is not right and legal on the part of the plaintiff to debit the defendant's account for providing amenities, which are to be used by all the allottees.

20 At no point of time, the plaintiff sent any agreement to this defendant for the development of the property. Whenever, the defendant insisted on a minutes of meetings, the plaintiff told that there was no necessity to execute any agreement or minutes of meeting and the oral understanding would suffice. The averments contained in the plaint in C.S.No.497 of 1998 filed by the defendant against the plaintiff and others be read as part and parcel of this Written Statement.

21 As per Power of Attorney dated 12.12.1994, the defendant was to be provided 2100 sq.ft in the ground floor. However, they have now provided one flat (950 sq.ft) in ground floor and another flat (1050 sq.ft) in first floor, which clearly shows that there were discussion between the plaintiff and the defendant after the Power of Attorney dated 12.12.1994. The allegation that this defendant was postponing the signing of the agreement is totally false. The plaintiff never sent any draft agreement for perusal and approval. The registered Power of Attorney was cancelled vide defendant's letter dated 14.05.1996 (and acknowledgment was obtained on 15.05.1996) and the revocation was finally registered on 30.09.1996 and a copy was handed over to plaintiff on 11.10.1996, hence as and from that date, the plaintiff did not have any power or authority to deal with the property of the defendant in any manner and all acts done after this date are null and void and does not bind the defendant. Moreover, by letter dated 14.05.1996, the plaintiff demanded the return of the Power of Attorney, the acknowledgment due was also obtained.

22 It is also false to state that flats were sold for Rs.1,300/- per sq.ft and the plaintiff had incurred a loss of Rs.200/- per sq.ft. In fact, by their letter dated 20.06.1996, the plaintiff stated that they sold three flats for Rs.1,500/- per sq.ft and one for Rs.1,800/- per sq.ft. As an afterthought and as a counter blast, the plaintiff has filed the suit in O.S.No.558 of 1999. If he was really aggrieved about the cancellation of Power of Attorney, which had come to his knowledge during January 1997, he ought to have come to this Court immediately. The plaintiff and its nominee are in totally unauthorised possession of Flat No.7. The assessment of Flat No.7 by the Municipal Corporation does not give any right to the plaintiff to claim that he is the owner of Flat No.7. In fact, that portion of undivided share of land of Flat No.7 is still retained by the defendant. The total area of undivided share sold by the plaintiff is 50.38%, in respect of 4 flats of the land of total area of 4473 sq.ft. The defendant was entitled to get 40.12 lakhs as per the terms of understanding, out of which, he has received only 14 lakhs from the plaintiff, hence, including Flat No.7, the defendant is entitled to get Rs.26,12,500/- from the plaintiff. If the Flat No.7 is handed over to the defendant, the plaintiff is liable to pay Rs.10,37,500/- to the defendant. It is not correct to say that this defendant received 19.66 lakhs from the plaintiff. The plaintiff has no right to deal with flat No.7 as per the arrangement entered into between the plaintiff and the defendant. The Power of Attorney dated 12.12.1994 only enabled the plaintiff to execute documents subject to the plaintiff representatives rendering accounts to the defendant. It cannot be construed that the plaintiff or his representatives had a right to sell and appropriate the sale proceeds themselves. The cancellation of Power of Attorney was resorted to because the plaintiff and his partner started behaving in a high handed manner and failed to render proper accounts and illegally and surreptitiously were attempting to deal with Flat No.7 and appropriate the entire proceeds.

23 The plaintiff has intentionally failed to refer the letter dated 19.02.1997 issued by the defendant in response to the letter dated 09.01.1997 of the plaintiff. The letter dated 19.02.1997 clearly sets out the details regarding the nature of transaction, in which the defendant has categorically mentioned that Flat No.7 should not be sold as the same was required for personal use. The assessment of Flat in his name, which was done without the knowledge of the defendant and that too, after the cancellation of Power of Attorney, by any stretch of imagination cannot be construed that he becomes the owner of the same and the alleged sale agreement with the said Manohar L.Lakshmanan, brother-in-law of Mr.U.Naresh is totally null and void and does not bind the defendant. The defendant is not liable to execute a fresh Power of Attorney in favour of the plaintiff or his representative to deal with Flat No.7. The relief sought for in the suit is not maintainable in law and the same is barred by limitation. Plaintiff has no cause of action to file the present suit. Hence, the suit is liable to be dismissed with exemplary costs.

24 Based on the pleadings and documents filed by both parties and submission made by both the Counsel the following issues have been framed by this Court on 26.10.2006:-

1. Whether the plaintiff is entitled to get the relief of specific performance in respect of undivided share of land in Flat No.7 as described in the plaint schedule?

2.Whether the plaintiff is entitiled to claim Rs.4,00,000/- as damages?

3.Whether the plaintiff is entitiled to

recover Rs.26,12,500/- from the defendants or in the alternative possession of Flat No.7 as shown in the plaint schedule along with a sum of Rs.10,37,500/-?

4. Whether the plaintiff is entitled to get the relief of permanent injunction against defendant 1 to 4 in respect of Flat No.7 for the reasons stated in the plaint?

5.To what relief the plaintiff is entitled?

25 As per order dated 29.11.2011 made in A.Nos.5516 of 2011 in CS.No.497 of 1998 and 5517 of 2011 in CS.No.558 of 1999, the issues were re-casted and additional issues were framed commonly as follows in supersession of issues framed on 26.10.2006:-

1. Whether the oral agreement pleaded by the plaintiff for sharing the proposed construction in the ratio of 60:40 between the plaintiff and the first defendant is true?

2. Whether the plaintiff is entitled to a decree for the recovery of a sum of Rs.26,12,500/- from the defendant?

3. Whether the plaintiff is entitled to an

alternative relief of recovery of possession of Flat No.7, which is described in the plaint schedule and also a sum of Rs.10,35,500?

4. Whether the plaintiff is entitled to the relief of permanent injunction restraining the defendants 1 to 4 not to alienate or encumber Flat No.7?

5. To what other relief/reliefs the plaintiff is entitled?

26 After framing of issues, during trial, on the side of the plaintiff, he himself was examined as PW1 and marked Exs.P1 to P21. On the side of the defendants Mr.L.Manohar was examined as DW1 and marked Ex.D1.

27 Heard the rival submissions made on both sides and perused the materials available on record and also the decisions referred to by the learned counsel appearing for 8th defendant.

Issue No.1:

28 The plaintiff has stated in the plaint in C.S.No.497 of 1998 in para nos.5 & 6, which reads as follows:

"5. As per the original arrangement between the plaintiff and the 1st and 2nd Defendant would

construct a total plinth area of 6750 sq.feet out of which 60% is to be allotted to the plaintiff and 40% is to to be sold third parties by the Second Defendant. The plaintiff wanted 2000 sq.feet for his own use and disposal of balance 2050 sq.feet is to be decided later by the plaintiff. It is further agreed between the parties that any construction put up by the second defendant over and above 6750 sq.feet, the sale proceeds will be shared equally, i.e.50:50 basis.

6. The Plaintiff further states that it was also agreed between the parties that the consideration for parting with the property of the plaintiff is that the plaintiff will get 4050 sq.feet of constructed area and the plaintiff will also get the difference in between the basic rate per sq.feet and actual sale proceeds per sq.ft of the 2700 sq.feet to be sold by the 2nd defendant. The basic rate as agreed between the parties originally was Rs.1,200/- per sq.feet. As submitted already, the plaintiff has to take 2000 sq.ft plinth area and value of 2050 sq.ft at the prevailing market rate in the even of deciding later to offer this for sale, and further the plaintiff will get the differential rate in respect of the sale of 2700 sq.ft by the second defendant. "

Even in the proof affidavit filed by the plaintiff/P.W.1 on 29.04.2011, he has reiterated the same contents as mentioned in the plaint. In order to prove the claim of the plaintiff, he marked

Ex.P2 note, in which it has been stated that anything above Rs.1200/- per sq.feet then the share ration is 60:40 and anything constructed above 6750 sq.feet then the share ratio is 50:50 and the plaintiff and the second defendant had signed on the note. Even though, the defendants have stated that Ex.P2 note is self serving statement, but, the annexure copy of the note shows that both the plaintiff and the second defendant had signed on the note and the defendants 1 to 8 had not denied the signature found on annexure to Ex.P2. It is contended by the 8th defendant that the plaintiff has not annexed the Ex.P2 along with the plaint, but, the fact remains that the defendants did not deny the signature of the second defendant found on Ex.P2. The defendants have admitted that the second defendant had only dealt with the plaintiff in C.S.No.497 of 1998. Further it is admitted that the plaintiff is owner of the property and he executed power of attorney in favour of the second defendant for developing his properties and admittedly there is no written agreement for the construction work and also for the mode of share. It was stated by the plaintiff, since there was cordial relationship between the plaintiff and father of the second defendant, no written agreement was executed and only power of attorney has been executed by the plaintiff in favour of the second defendant to enable him to carry out construction works in the land of the plaintiff. It is also seen from the correspondence letters written by the plaintiff to the second defendant in C.S.No.497 of 1998 that the plaintiff has stated about the 60:40 sharing and also over the construction of 6750 sq.feet 50:50 sharing. Even in the reply of the plaintiff to the legal notice sent by the first defendant, there was mentioning about the sharing stated supra. The defendants contended that the second defendant has sent draft agreement for the construction and the plaintiff did not sign the same, but the defendants failed to produce the said document before this Court. The citations referred to by the learned counsel appearing for 8th defendant is not applicable to the present case on hand, since the facts and circumstances of that cases are entirely different from the facts of the present case.

29 Therefore, this Court can easily draw inference that they have agreed to construct the flats with plinth area of 6750 sq.feet at the basic rate of Rs.1200/- per sq.feet, if it goes over Rs.1200/- in which the sharing is 60:40 and if the construction goes beyond 6750 sq.feet, then sharing would be 50:50. Hence this issue is answered in favour of the plaintiff.

Issue No.2:

30 As already stated that admittedly the land belongs to the plaintiff in C.S.No.497 of 1998 and defendant in C.S.No.558 of 1999 and D1 is partnership firm, D2 is Managing Partner. Even though, the defendants have stated that D3 is unnecessary party and he is not the partner, they have not produced any partnership deed, when the plaintiff has stated D3 as one of the partners of the D1 partnership firm, they have not disproved by producing partnership deed. Therefore, this Court can draw adverse inference that D3 is also one of the partners of the D1 partnership firm. Even though, it is contended by the 8th defendant that he is a bonafide purchaser and he purchased the Flat No.7 for Rs.16.00 lakhs, no document was produced to prove the same. The defendants 1 to 7 have filed a joint memo stating that 2nd defendant only had transaction with the plaintiff and the other defendants are not aware of the same and there is no oral evidence on the side of these defendants. In Ex.P11, at page no.2, the defendants have stated as follows:

> *"The flats on first and second floors were sold even before the plan was sanctioned when the agreed basic price was Rs.1000/- per sq.ft. The Purchasers had demanded additional amenities which were provided at an extra cost of Rs.500/- per sq.ft. Taking the square foot rate to Rs.1500/- so much so no surplus was available and hence no amount was payable by us to you on account of this sale.*
>
> *For the flat on ground floor which was sold at Rs.1800/- there was a surplus of Rs.300/- per*

sq.ft. (Rs.1800 – Rs.1500) which we should share equally and accordingly the amount payable by us to you on this account is Rs.1.5 lakhs.

Now there is only one flat remaining to be sold and as I already told you that unless I sell this at Rs.2000/- per sq.ft. I will end up in loss in this venture. If this flat is sold at Rs.2000/- per sq.ft. There would be a surplus of Rs.500/- per sq.ft. of which your 50% share would come to Rs.287500/-"

But they have not proved that agreed basic price was Rs.1000/- per sq.ft. and the second defendant provided additional amenities for which, they spent Rs.500/- additionally per sq.ft. The purchasers of the flats in this case have been examined. Even the second defendant has not made any advertisement/publication regarding selling of the flats. The defendants have not produced any document to show that ground floor was sold at Rs.1800/- per sq.ft. The second defendant intended to sell 7th Flat at the rate of Rs.2000/- per sq.ft, for which also there is no document to show the sale consideration paid by 8th defendant to the second defendant. All the flats were sold to the persons, who are closely associated to the defendants 2 and 3. If they sold to some other persons, those who are not closely associated with them, the flats would have been sold to higher rate. Hence, considering the facts and circumstances of the case, in the absence of any written agreement or production of any sale deed for any sold Flats, this Court fix the sale price of sold flats at Rs.1500/- per sq.ft.

31 This Court has appointed Advocate Commissioner on 10.11.1998 to measure the built up area in the schedule contained in the plaint and after inspection he submitted his report, which was marked as Ex.P21, in which, following details were given.

Ground Floor (Flat Nos.1 & 2)	-	2020 sq.feet
First Floor (Flat Nos.3 & 4)	-	2607 sq.feet
Second Floor (Flat Nos.5,6 & 7)	-	2607 sq.feet.
Total	**-**	**7234 sq.feet**
Flat No.7 Built up area	-	1182 sq.feet

32 It is seen that contrary to the report of the Advocate Commissioner, neither the plaintiff nor the defendants have produced any document and they have not filed any objections on the Advocate Commissioner's report. Further, so far, no document was produced by the defendants to prove that a particular flat measuring a particular square foot has been sold for a specific amount. Therefore, this Court has taken the extent of constructed portion as per the Advocate Commissioner's report by fixing Rs.1500/- per sq.ft. as follows.

Total proposed area	: 6750 sq.ft.
Ratio of sharing (60:40)	: 4050 sq.ft to Plaintiff 2700 sq.ft. to 1st defendant

For 4050 sq.ft.

Less 2000 sq.ft. from 4050 sq.ft, Since it was admitted that the plaintiff has taken 2000 sq.ftt.	: 4050 – 2000 = 2050 sq.ft.
Basic rate agreed by the parties	: Rs.1200/- per sq.ft.
Sale price of Sold flats fixed by this Court	: Rs.1500/- per sq.ft.
Plaintiff entitled to	: 2050xRs.1500=Rs.30,75,000/-
Less the amount already received by the plaintiff	: Rs.30,75,000 – Rs.14,00,000 **= Rs.16,75,000/- (A)**

For 2700 sq.ft.

Agreed basic rate per sq.ft. is Rs.1200/- and this Court fixed the sale price at Rs.1500/-and hence surplus is Rs.300/-	: 2700xRs.300 = Rs.8,10,000/-
Plaintiff entitled to 60:40	:**4,86,000/- (B)**

Excess construction

As per Advocate Commissioner's report, total construction is	: 7234 sq.ft.
proposed area is	: 6750 sq.ft
Excess construction is	: 7234–6750= 484 sq.ft.
The plaintiff is entitled to 50:50 on the excess constructions	: 484xRs.1500= Rs.7,26,000

$\frac{7,26,000}{2}$ = **Rs.3,63,300/-(C)**

Total amount, for which the plaintiff is entitled to is (A)+(B)+(C) : Rs.25,24,000/-

Accordingly the plaintiff is entitled to get a sum of Rs.25,24,000/- with interest at the rate of 12% p.a. from the date of filing of plaint till the date of deposit of amount by the defendants.

Issue No.3

33 It is seen from Ex.P11, the subject property i.e. Flat No.7 was not sold at the relevant point of tim, but 8th defendant has contended that he purchased the same for a value of Rs.16.00 lakhs, for which no document was produced. On perusing the records and evidence, it is clear that the flats were sold to close relative of the second defendant and it is also seen that the defendants have stated that Flat No.7 has been sold to 8th defendant, who is none other than brother-in-law of the second defendant after conclusion of the power of attorney. Therefore, since this Court concludes the plaintiff is the owner of the property and there was oral agreement between the parties and some piece of proof was also produced, which was signed by the plaintiff and the second defendant in C.S.No.497 of 1998 by both the parties, from which it is clear that there was an oral agreement for mode of sharing at 60:50 and in case of exceeding the proposed square feet, the sharing would be 50:50 and also it is clear that 7th flat has not been sold, the plaintiff is entitled to recover the possession of flat

No.7. But, it is stated that 7th flat has been sold to 8th defendant and as already stated no proof was produced for the same. It is stated by the defendants that if Flat No.7 has not sold at Rs.2000/- then it would be great loss to them. Since there is no proof to show that 8th defendant paid Rs.2000/- per sq.ft., this Court already fixed Rs.1500/- per sq.ft for entire construction. Therefore, the defendant have to pay a sum of Rs.25,24,000/- as concluded in Issue No.2 to the plaintiff or the defendants shall hand over the possession of Flat No.7, after deduction of the value for 7th Flat, the defendant has to pay the remaining amount as shown below:

The built up area for 7th Flat as per Advocate Commissioner's report is	:	1182 sq.ft.
	:	1182 x Rs.1500
Total value of 7th Flat		**= 17,73,000/-**

Therefore, if the defendants hand over the possession of Flat No.7 then, they have to pay a sum of **Rs.7,51,000/-** (25,24,000 – 17,73,000) alone with interest at the rate of 12% p.a. to the plaintiff or if the defendants are not ready to hand over the possession of 7th Flat, the defendants have to pay a sum of Rs.25,24,000/- with interest at the rate of 12% p.a. from the date of filing of plaint to till the date of deposit of the amount by the defendants to the plaintiff and on payment of the same, the plaintiff has to execute a sale deed in favour of 8th defendant.

Issue Nos.4 & 5:

34 In view of the discussions made in the Issue Nos.2 & 3 and answered in favour of the plaintiff in C.S.No.497 of 1998, the defendants are hereby restrained from alienating the Flat No.7 until payment of Rs.25,24,000/- to the plaintiff along with interest at the rate of 12% p.a. from the date of plaint to till the date of deposit.

35 In the result, the suit in C.S.No.497 of 1998 is decreed in part in favour of the plaintiff with cost and Suit in C.S.No.558 of 1999 is dismissed without cost. The defendants in C.S.No.497 of 1998 shall make the payment as stated above or hand over possession of 7th Flat within three months from today, failing which, the plaintiff shall take possession of the suit property namely Flat No.7 in the manner known to law and also in addition to that shall recover a sum of Rs.7,51,000/- along with interest at the rate of 12% p.a. In case, the defendants paid the entire amount of Rs.25,24,000/- along with interest at the rate of 12% p.a from the date of plaint till the date of deposit of amount, the plaintiff in C.S.No.497 of 1998 is liable to execute the sale deed in favour of 8th defendant, till such time, the defendants in O.S.No.497 of 1998 are restrained from alienating the suit property.

22.11.2019

Index : Yes/No
tsh/cgi

List of Witness examined on the side of the plaintiffs

M.G.Sivaraman - PW1

List of documents marked on the side of the plaintiffs

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	The registered general power of attorney executed by the plaintiff in favour of the 2nd defendant, since deceased	
2.	P2	The terms and conditions discussed between the plaintiff and the 2nd defendant.	
3.	P3	The copy of the letter written by the plaintiff to the 2nd defendant	30.04.1996
4.	P4	The letter written by the plaintiff to the 2nd defendant	14.05.1996
5.	P5	The copy of the letter written by the plaintiff to the 2nd defendant	15.05.1996
6.	P6	The acknowledgment in writing for having received two covers from the plaintiff addressed to the 2nd defendant	15.05.1996
7.	P7	The letter written by the 1st defendant to the plaintiff	15.05.1996
8.	P8	The copy of the letter written by the plaintiff to the 2nd defendant	30.05.1996
9.	P9	The letter written by the 1st defendant to the plaintiff	30.05.1996
10.	P10	The office copy of the letter sent by the plaintiff to the second defendant	05.06.1996
11.	P11	The reply letter written by the 1st defendant to the plaintiff	20.06.1996
12.	P12	The registered deed of revocation of general power of attorney executed by the plaintiff	30.09.1996
13.	P13	The registered letter written by the 1st defendant to the plaintiff	09.01.1997
14.	P14	The cheque for Rs.70,654.67 issued by the 1st defendant in favour of the plaintiff	09.01.1997
15.	P15	The office copy of the letter sent by the plaintiff to the 2nd defendant	19.02.1997

16.	P16	The written acknowledgment for having received one cover addressed to the 2nd defendant from the plaintiff	19.02.1997
17.	P17	The legal notice received from the 1st defendant and addressed to the plaintiff	17.03.1998
18.	P18	The xerox copy of the legal notice sent on behalf of the plaintiff and addressed to the advocate for the 1st defendant	28.03.1998
19.	P19	The plan of proposed apartments ground floor in Plot No.56A, 2nd street, Karpagam Avenue, Chennai-28	
20.	P20	The plan for the proposed residential flats at 2nd street, Karpagam Avenue, Chennai-600028	
21.	P21	The advocate commissioner given a report alongwith a chartered engineer's report with sketch appointed by the Advocate Commissioner and its enclosures (series)	24.12.1998

List of Witness examined on the side of the defendants

L.Manohar - DW1

List of documents marked on the side of the defendant

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	D1	The photographs along with CD (series)	

22.11.2019
(P.V.J.)

P. VELMURUGAN, J.

cgi

**CS.Nos.497 of 1998
and 558 of 1999**

22.11.2019