

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.10.2019

PRONOUNCED ON : 18.11.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

A.S.No.888 of 2012

1. Sandeep Mehta

Director,

Jain Housing & Constructions Limited,

No.7, Lakshminarasimhan Street,

T.Nagar, Chennai - 600 017.

2. Jain Housing & Constructions Limited,

No.7, Lakshminarasimhan Street,

T.Nagar, Chennai - 600 017.

.... Appellants/Defendants

Vs.

Rani Paul

Represented by her husband

Dr.G.Paul Vijayarajan

.... Respondent/Plaintiff

Prayer:-

First Appeal has been filed under Section 96 of the Civil Procedure Code against the Judgement and Decree dated 30.11.2010 passed in O.S.No.8771 of 2010 on the file of the Additional District Judge, Fast Track Court No.1, Chennai.

For Appellants : Mr.V.Kuberan  
for M/s.Rank Associates

For Respondent : Mr.S.P.Chockalingam

JUDGMENT

Aggrieved over the Judgement and Decree dated 30.11.2010 passed in O.S.No.8771 of 2010 on the file of the Additional District Judge, Fast Track Court No.1, Chennai, the defendants have preferred the first appeal.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

### 3.Suit for recovery of money.

4.The case of the plaintiff in brief is that the second defendant is a builder and flat promoter, of which, the first defendant is the Executive Director. The second defendant had published an advertisement in the newspaper and called for Joint Venture and Development of Flats in Trichirappalli and the plaintiff being the owner of the property situated at Plot No.18, Crawford Colony Main Road, Abhisekhapuram Village, Trichirapalli, also interested in developing her property, met the defendants and after negotiation, the first defendant, on behalf of the second defendant, promised to construct and complete the flats with an aggregate super built up area of 30% with proportionate undivided share of 30% in the plaintiff's land to be retained by the plaintiff as consideration for the arrangement entered into between the parties and on the basis of the abovesaid understanding, the plaintiff entered into a Joint Venture Agreement on 17.04.2002 with the second defendant and as per the agreement, the plaintiff had deposited all the title deeds of her property with the second defendant's office and handed over the possession of the property to the defendants enabling them to fulfill the object of the Joint Venture Agreement. The plaintiff had also executed a power of attorney for the said property in favour of R.Vasudevan, the second defendant's representative and the defendants had also paid the plaintiff a sum of Rs.12,00,000/- as interest free refundable security deposit. As per the terms of the agreement, the defendants have to complete the construction of flats within 18 months and the time is the essence of the contract. To the shock and dismay of the plaintiff, no construction work was put up by the defendants and no endeavour was also made by them whatsoever to fulfill the obligations under the agreement and on the plaintiff questioning the defendants, it was informed to the plaintiff by the defendants that they have no intention of developing the property and directed the plaintiff to take back all her title deeds by repaying the interest free security deposit. Thus, the defendants have committed breach of contract, left with no other alternative, the plaintiff published advertisement in the newspaper for the disposal of her property and though many prospective purchasers approached the plaintiff qua the purchase of the property, they were reluctant to deal with the property as the original title deeds are with the second defendant and the plaintiff had prepared to pay the interest free security deposit to the defendants to get back her original documents and for the cancellation of the Joint Venture and Development agreement based on the first defendant's consent to hand over the title deeds and sign the cancellation agreement, based on the same, the plaintiff has made all arrangements and she also planned to travel abroad to take care of her daughter, who is in the family way. Taking advantage of

the plaintiff's precarious situation, at the last moment, the defendants had not come forward to sign the cancellation agreement and not handed over the original title deeds and on the other hand, demanded and blackmailed the plaintiff that a sum of Rs.2,16,000/- to be paid in cash to them as interest calculated at the rate of 18%, failing which, they will not sign the cancellation deed and return the title deeds. However, the Joint Venture Agreement stipulates only for the refund of interest free security deposit and therefore, the demand of interest on the part of the defendants on the sum is illegal and the defendants failed to keep with the terms of the agreement and further, threatened the plaintiff as abovestated and left with no other option, the plaintiff paid a sum of Rs.2,16,000/- apart from the refund of interest free security deposit, which payment was acknowledged by the first defendant and the abovesaid amount had been extracted from the plaintiff illegally on the part of the defendants apart from committing breach of contract and thereby, the defendants had unjustly enriched themselves by cheating the plaintiff and also caused lot of anguish, hardship, suffering and mental agony to the plaintiff as well as her husband. Hence, according to the plaintiff, the defendants are liable to pay Rs.5,00,000/- as damages for committing breach of contract, Rs.3,00,000/- for causing mental agony, suffering and hardship and return the illegally collected amount of Rs.2,16,000/-, in all, according to the plaintiff, the defendants are liable to pay the suit sum of Rs.10,16,000/- with interest at the rate of 12% from the date of the plaint till realisation and the plaintiff also issued a legal notice dated 20.10.2003 calling upon the defendants to pay the abovesaid sum, despite the receipt of the same, the defendants have failed and neglected to pay the said amount and hence, the suit.

5.The defendants resisted the plaintiff's suit contending that the suit laid by the plaintiff is not maintainable either in law or on facts and according to the defendants, the plaintiff's suit is bad for misjoinder of parties and that the first defendant has been unnecessarily dragged into the proceedings. No relief could be claimed by the plaintiff against the first defendant and even according to the plaintiff, the joint venture agreement had been entered into only with the second defendant, which is a public limited Company and therefore, no personal liability could be fastened on the first defendant, who is the Director of the second defendant company and on that score alone, the suit is liable to be dismissed. Without prejudice to the abovesaid contention, according to the defendants, it is only the plaintiff, who had approached the second defendant for developing her property after enquiring about the reputation of the second defendant and accordingly, the joint venture development agreement was entered into and however, the plaintiff, subsequently, changed her mind and did

not want to go through the process of developing her property and resultantly, the second defendant was necessitated to defer the proceedings further on account of change of mind on the part of the plaintiff. The second defendant has paid a sum of Rs.12,00,000/- to the plaintiff and had carried out extensive survey and other related works for the purpose of developing property and also retained the services of an Architect for the purpose of preparing the necessary plans and paid his fees and also approached various financial institutions for getting the project approved and for the purpose of arranging the funds, if required for the purpose of development and some of the customers of the second defendant had also evinced interest in acquiring flats to be constructed by the second defendant in the property, however, on account of the plaintiff's withdrawal from the project for the reasons not known, the second defendant had been put to hardship and loss of reputation and therefore, called upon to pay damages to the second defendant for unilaterally withdrawing from the project. After much persuasion, the plaintiff agreed to pay nominal interest on the deposit alone and conclude the deal and accordingly, an agreement for cancellation was entered into between both the parties on 10.10.2003 and thereby, the Joint Venture Agreement had been cancelled. The defendants, pursuant to the cancellation agreement, returned the original documents to the plaintiff and the cancellation agreement also mentioned that only due to certain reasons, both the parties had mutually decided to cancel the joint venture and development agreement and therefore, the allegations made by the plaintiff contrary to the same is false. The plaintiff is not entitled to recover the suit amount from the defendants. The plaintiff is in the habit of unilaterally withdrawing from the agreement and even as per the joint venture agreement dated 17.04.2002, the second defendant had been asked to remit the deposit amount to one Mr.P.Subramanian with whom the plaintiff had earlier entered into an agreement and even the said agreement was not averred by the plaintiff and therefore, the plaintiff has a history of breach of agreement and denied the case of the plaintiff that the defendants demanded and blackmailed the plaintiff for paying Rs.2,16,000/- as interest, taking advantage of the precarious situation of the plaintiff as alleged in the plaint and contended that her case that she was coerced and unduly influenced by the defendants to part with the sum of Rs.2,16,000/- is false and it is false to state that the defendants had illegally extracted the abovesaid amount from the plaintiff and therefore, according to the defendants, the plaintiff has no cause of action and the suit is liable to be dismissed.

6. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

" (1).Whether the plaintiff and the second defendant have entered into cancellation agreement on 10.10.2003 with regard to the joint Venture Agreement entered into between them?

(2).Whether the plaintiff is entitled for damages for breach of contract of joint Venture Agreement at Rs.5,00,000/- for causing mental agony and suffering hardship at Rs.3,00,000/- and also entitled for the return of Rs.2,16,000/- \paid by her to the defendants?

(3).Is not the suit had for misjoinder of parties?

(4).Whether the defendants are entitled to claim interest at the rate of 18% p.a. on the amount paid on joint Venture Agreement from the plaintiff?

(5).To what other relief the plaintiff is entitled?"

7.In support of the plaintiff's case, PW1 was examined and Exs.P1 to P11 were marked. On the side of the defendants, DW1 was examined and Ex.D1 was marked.

8.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit in favour of the plaintiff partly for Rs.4,16,000/- towards damages with interest at the rate of 6% per annum from the date of the plaint till recovery with proportionate costs and dismissed the plaintiff's suit in other aspects. Aggrieved over the judgment and decree of the trial Court, the first appeal has been preferred by the defendants.

9.The following points arise for determination in this first appeal:

"(1).Whether the plaintiff's suit is bad for misjoinder of parties as put forth by the defendants?

(2).Whether the cancellation agreement dated 10.10.2003 has been obtained by the defendants from the plaintiff by exercising force, coercion and undue influence and thereby, extracted

the sum of Rs.2,16,000/- illegally from the plaintiff as alleged by the plaintiff.

(3).Whether the plaintiff is entitled to seek the reliefs claimed in the suit without setting aside the cancellation agreement dated 10.10.2003 as per law?

(4).Whether the plaintiff is entitled to recover the suit sum from the defendants with interest as claimed in the plaint?

(5).To what relief the plaintiff is entitled to?

(6).To what relief the defendants/appellants are entitled to?"

10.Point Nos.1 to 4

From the materials placed on record, it is found that the Joint Venture Development Agreement had been entered into between the plaintiff and the second defendant with reference to the promotion of the plaintiff's property by the second defendant and the Xerox copy of the abovesaid agreement has been marked as Ex.P1. It is found that pursuant to the abovesaid agreement entered into between the parties, the plaintiff had handed over the title deeds of her property to the second defendant. It is further seen that the second defendant had paid a sum of Rs.12,00,000/- to the plaintiff pursuant to the agreement as interest free refundable security deposit and Ex.P1 agreement stipulates that the construction of Flats should be made by the second defendant within a particular point of time as recited therein. However, it is the case of the plaintiff that the second defendant had not proceeded with the construction of flats in the property and on being questioned, according to the plaintiff, she had been apprised by the defendants that they have no intention to go ahead with the project and directed the plaintiff to take back her title deeds by repaying the interest free security deposit and thus, according to the plaintiff, the defendants had committed breach of contract. Per contra, according to the defendants, after the Joint Venture Agreement Ex.P1, it is only the plaintiff, who had withdrawn from the project unilaterally on account of the change of mind and on account of the same, the second defendant was unable to proceed with the construction of flats and though the second defendant had endeavoured to proceed with the construction of flats in the property as detailed in the written statement, inasmuch as the plaintiff had unilaterally withdrawn

from the project for the reasons known to the plaintiff, according to the second defendant, directed the plaintiff to return the interest free security amount and get back her title deeds and cancel the agreement and on account of the damages sustained by the second defendant, the plaintiff was asked to pay nominal interest on the abovesaid security amount and accordingly, it is the case of the defendants that the plaintiff had agreed to pay nominal interest on the interest free security deposit and conclude the deal and resultantly, the cancellation agreement was effected between the parties on 10.10.2003.

11.Now, according to the plaintiff, only due to the failure of the defendants to promote the property, Ex.P1 agreement had been cancelled and on account of the failure of the defendants to go ahead with the project, according to the plaintiff, she had been necessitated to give advertisement in the newspaper for the sale of her property and the plaintiff was also ready to return back the interest free security deposit and obtain her title deeds from the defendants and conclude the deal and the plaintiff was also planning to go abroad to look after her daughter, who was in the family way, according to the plaintiff, taking advantage of the abovesaid precarious situation of the plaintiff, it is put forth that the defendants had forced the plaintiff to part with a sum of Rs.2,16,000/- for cancelling the agreement and for returning the title deeds and left with no other option, the plaintiff was coerced and unduly influenced by the defendants and paid the abovesaid sum and entered into the cancellation agreement and thereby, according to the plaintiff, she had been put to loss, sufferings, mental agony and accordingly, it is the case of the plaintiff that the defendants are liable to return the suit amount to her with interest and further, according to the plaintiff, despite calling upon the defendants to pay the suit amount through legal notice, the defendants failed to comply with the demands and hence, it is stated that the plaintiff had been necessitated to levy the suit for recovery of the amount.

12.As pointed out, according to the defendants, inasmuch as the plaintiff had unilaterally withdrawn from the project, it is they, who had been put to loss and hardship and also the loss of reputation and accordingly, the plaintiff had agreed to pay nominal interest on the interest free security deposit and paid a sum of Rs.2,16,000/- at the time of cancellation of the agreement and retrieved her title deeds and it is the case of the plaintiff that the sum of Rs.2,16,000/- had been obtained from her by the defendants by exercising coercion and undue influence as alleged in the plaint is false and hence, according to the defendants, the plaintiff has no cause of action to levy the suit and the suit is liable to be dismissed.

13. In so far as this case is concerned, considering the questions of law involved in the matter, particularly, when according to the defendants, the plaintiff is not entitled to seek any relief based on the cancellation agreement dated 10.10.2003 without seeking any relief of setting aside the same as illegal and not binding on her, according to the defendants, the plaintiff is not entitled to secure the relief prayed for. In other words, according to the defendants, when the plaintiff had agreed that she had executed the cancellation agreement with the defendants and when the plaintiff had not challenged the same by way of setting aside the same as per law, according to the defendants, the very basis of the plaintiff's suit is legally unsustainable. It is found that the defendants had also cross examined the plaintiff as PW1 only with reference to the abovesaid aspects primarily.

14. In the light of the abovesaid contentions put forth by the defendants, without going into the question, whether the cancellation agreement had been brought about by the defendants by exercising coercion and undue influence and illegally obtained Rs.2,16,000/- from the plaintiff pursuant to the same, when according to the plaintiff, she had been forced to part with a sum of Rs.2,16,000/- to the defendants on account of the exercise of coercion and undue influence, in such view of the matter, whether the plaintiff would be entitled to maintain the suit, as such, for recovery of the suit amount without setting aside the cancellation agreement entered into between the parties on 10.10.2003, has to be seen.

15. Without going into the truth of the rival contentions put forth by the respective parties as regards the reasons put forth by them for the cause of the cancellation of the agreement dated 10.10.2003, when according to the plaintiff, the cancellation agreement had been brought about by the defendants by exercising coercion and undue influence, in such view of the matter, when the agreement of cancellation, assuming for the sake of arguments, had been brought about by exercising coercion and undue influence on the plaintiff, such agreement would only be a voidable agreement at the option of the party whose consent was so obtained by exercising coercion and undue influence and the same could be gathered from Sections 19 & 19(A) of the Indian Contract Act, 1872. Therefore, when the plaintiff has based her case only upon the cancellation agreement dated 10.10.2003 and not upon Ex.P1 Joint Venture Agreement and by way of the cancellation agreement marked as Ex.P7, the Joint Venture and Development Agreement had been put to an end, in such view of the matter, furthermore, when the cancellation agreement Ex.P7 reads that due to certain reasons both parties thereto had mutually decided to cancel the Joint Venture and Development Agreement dated 17.04.2002 and by way of Ex.P7 cancellation

agreement, when it is further seen that the second defendant had received a sum of Rs.2,16,000/- and the plaintiff had received the title deeds from the second defendant and thereby Ex.P1 agreement had been put to an end, in the light of the abovesaid factors, Ex.P7 cancellation agreement being only a voidable agreement at the option of the plaintiff, assuming that the plaintiff's case that the said agreement had been brought about by exercising coercion and undue influence on the part of the defendants is true, as rightly put forth by the defendants' counsel without setting aside the cancellation agreement as per law, the plaintiff is found to be not entitled to secure any relief based on the same from the defendants.

16. In this connection, it is useful to refer the decision reported in AIR 1974 Madras 36 (Rajamani Ammal V. Bhoorasami Padayachi and another) wherein, it has been held that even if the document is vitiated by exercise of undue influence, still the document is only voidable and not void ab initio and therefore, the plaintiff must have the document set aside within three years from the date of the document and further held that Section 19 & 19(A) of the Contract Act only postulates that when consent to an agreement is caused by undue influence, such an agreement is a contract voidable at the option of the party whose consent was so caused and such contract may be set aside either absolutely or upon such terms and conditions as the Court may deem just. Accordingly, on the above position of law with reference to the same, the Court, in the abovesaid decision, held that without setting aside the document within the time allowed by law, the suit is not maintainable and barred by limitation. Applying the principles of law outlined in the abovesaid decision to the case at hand, when it is seen that the plaintiff has based her lis only upon the cancellation deed Ex.P7 and when the plaintiff has put forth that Ex.P7 had been obtained from her by the defendants by exercising coercion and undue influence, assuming the abovesaid case of the plaintiff is true, inasmuch as the plaintiff is admittedly a signatory to the same and had also received back the title deeds from the second defendant and by way of the cancellation deed, Ex.P1 agreement had been put to an end, in such view of the matter, despite the abovesaid factors, if the plaintiff still endeavours to seek any relief based on the said cancellation agreement, the cancellation agreement being only a voidable document at the option of the plaintiff, in such view of the matter, the plaintiff should have taken steps for setting aside the cancellation agreement as per law within the time allowed by law and on the other hand, when it is seen that the plaintiff has failed to seek the relief of setting aside the cancellation agreement as per law, no relief could be granted in favour of the plaintiff based on the same and the abovesaid aspects of the matter had been failed to be considered and determined by the

trial Court. When the parties had adduced evidence with reference to their respective cases in the matter, particularly, when the plaintiff has only pleaded that the cancellation agreement had been brought about by way of exercising coercion and undue influence on the part of the defendants, the position being above, even though the abovesaid case of the plaintiff has been disputed by the defendants in toto as above pointed out and assuming the abovesaid case of the plaintiff is true, when such a cancellation deed is only voidable instrument, in such view of the matter, without seeking to set aside the same as per law, the same could only be held to be a valid document unless and until the same is set aside and in such view of the matter, the relief prayed for by the plaintiff based on the voidable instrument without setting aside the same as per law cannot be extended in favour of the plaintiff as put forth by the defence counsel. On the basis of the above legal aspects alone, the plaintiff's suit is found to be misconceived and accordingly, no relief could be granted in favour of the plaintiff as prayed for.

17. On factual matrix, the plaintiff would put the blame on the defendants for not going ahead with the project envisaged under Ex.P1 agreement. Per contra, according to the defendants, it is only the plaintiff, who had unilaterally withdrawn from the project. However, the cancellation agreement Ex.P7 recites that due to certain reasons, both the parties thereto have mutually decided to cancel the joint Venture Agreement dated 17.04.2002. In the light of the abovesaid recitals contained in Ex.P7 cancellation deed and when Ex.P7 cancellation deed has not been set aside till date as per law and when it is found that the plaintiff and the second defendant are signatories to the abovesaid cancellation deed and both parties have also acted upon under the abovesaid cancellation deed as recited therein, in such view of the matter, it has to be held that the reasons put forth by the respective parties blaming each other for the cancellation of the Joint Venture and Development Agreement Ex.P1 are not required to be adjudicated as such, particularly, when the recitals contained in the cancellation deed Ex.P7 point otherwise and more so, when the cancellation deed has not been set aside as per law.

18. In the light of the abovesaid factors, Ex.P7 cancellation deed having not been set aside as per law by the plaintiff and Ex.P7 cancellation deed, as such, is valid as on date, in such view of the matter, we have to go only by terms set out in the cancellation deed and in such view of the matter, when it is found that the parties had mutually decided to cancel Ex.A1 agreement by way of the cancellation deed, in such view of the matter, it has to be held that the plaintiff has failed to establish that the cancellation deed had been brought about by

the defendants by exercising coercion and undue influence as per law and that the defendants had illegally extracted the sum of Rs.2,16,000/- from her based on the cancellation deed. Accordingly, it is found that the plaintiff is not entitled to recover the suit amount with interest from the defendants as prayed for.

19. When the cancellation deed Ex.P7 stands valid as on date and not set aside by the plaintiff by seeking appropriate reliefs with reference to the same, in such view of the matter, neither the plaintiff nor the defendants could be allowed to adduce the evidence contrary to the recitals found in the cancellation deed and in such view of the matter, when the cancellation deed recites that the same had been brought about due to mutual reasons as agreed to between the parties thereto, resultantly, neither the reasons adduced by the plaintiff nor the reasons projected by the defendants for the cancellation of the Joint Venture and Development Agreement and the execution of the cancellation deed can be assessed and determined and on that score also, it has to be held that the plaintiff's suit, as such, is not maintainable for claiming the damages from the defendants based on the cancellation deed.

20. The defendants have taken the plea that the suit is bad for misjoinder of parties. From the materials available on record, it is found that the second defendant being a company and the plaintiff having entered into the Joint Venture and Development Agreement only with the second defendant and also the cancellation deed had also been effected only between the plaintiff and the second defendant, in such view of the matter, when the first defendant, as such, is not directly associated with the abovesaid documents, even though he may be a Director of the second defendant, however when no personal liability could be attributed against the first defendant for the acts alleged by the plaintiff, in such view of the matter, as rightly contended by the defendants, the plaintiff's suit is bad for misjoinder of the first defendant. The trial Court had proceeded to hold that the first defendant being a Director of the second defendant company and had also dealt with the plaintiff on behalf of the second defendant, he is also necessary party to the suit. Even accepting the abovesaid reasonings of the trial Court, at the most, the first defendant would only be a proper party, he having negotiated on behalf of the second defendant with the plaintiff, however, it is found that no personal relief could be prayed for by the plaintiff against the first defendant as such and the trial Court had erred in not considering the abovesaid aspects in the right perspective and found to have erroneously granted the decree in favour of the plaintiff jointly against the defendants.

21.For the reasons aforesated, the point Nos.1 to 4 are accordingly answered against the plaintiff and in favour of the defendant.

22.Point Nos.5 & 6

For the reasons aforesated, the Judgement and Decree dated 30.11.2010 passed in O.S.No.8771 of 2010 on the file of the Additional District Judge, Fast Track Court No.1, Chennai, are set aside and resultantly, the suit laid by the plaintiff in O.S.No.8771 of 2010 is dismissed without costs. Accordingly, the first appeal is allowed without costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS III-MDU)

//True Copy//

Sub Assistant Registrar

sms

To

The Additional District Judge,  
Fast Track Court No.1, Chennai.

Copy to

The Section Officer,  
V.R.Section, High Court,  
Madras.

+2cc to Mr.S.P.Chockalingam, Advocate, S.R.No.95359

+1cc to M/s.Rank Associates, Advocate, S.R.No.95471

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A.S.No.888 of 2012

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