IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 24.07.2019	Delivered on 07.08.2019

CORAM:

THE HONOURABLE MR.**JUSTICE R.SUBRAMANIAN**

C.S.No.500 of 2014

Mrs. Sasireka Satyanarayan ... Plaintiff

Vs

1. M/s. Lakshmi Builders
   Rep. By its Partner,
   Mrs. E.Seethalakshmi
   No.7, Leith Castle North Street,
   Santhome, Chennai 600 028.

2. Mrs.E.Seethalakshmi
   Partner,
   Lakshmi Builders,
   No.7, Leith Castle North Street,
   Santhome, Chennai 600 028.

3. Mr.P.Elango
   Partner
   Lakshmi Builders,
   No.7, Leith Castle North Street,
   Santhome, Chennai 600 028. ... Defendants

Prayer : Plaint filed under Order VII Rule 1 of the Code of Civil Procedure, read with Order IV Rule 1 of the Original Side Rules, praying for the following judgment and decree:-

(a) declaration declaring that the plaintiff is the absolute owner of the suit schedule property and consequently directing the defendants to deliver and hand over vacant possession of the Suit Schedule property to the Plaintiff;

(b) direction, directing the defendants to pay a sum of Rs.9,00,000/- as damages for use and occupation at 25,000/- p.m. from 18.03.2011 to date of plaint and Rs.25,000/- per month as future damages from the date of plaint till delivery of Possession;

(c) Declaration, declaring that the Joint Venture Agreement dated 17.05.1996 executed between the plaintiff and the first defendant as null and void and not binding on the plaintiff;

(d) for declaration, declaring the Power of Attorney dated 22.05.1996 registered as document bearing No.624 of 1996 executed by the plaintiff in favour of the third defendant as null and void;

(e) Mandatory injunction, directing the first defendant to deliver all the title deeds in respect of the Suit Schedule property on receipt of Rs.3,65,000/-;

(f) directing the defendants to pay the costs of this suit.

For Plaintiff : Mr.K.V.Sundararajan

For Defendants : Mr.S.Ambalavanan

JUDGMENT

This suit has been filed seeking recovery of possession.

2. The case of the plaintiff in brief is as follows:

2.1. The plaintiff has purchased the property bearing Door No.7, Ram Nagar, Peravallur, Perambur, Chennai 600 011, under the Sale deed dated 05.11.1969, registered as document No.4277 of 1969 in the office of the Sub Registrar, Sembium. Ever since purchase of the property, the plaintiff was in possession and enjoyment of the same.

2.2. The defendants 2 and 3, who are carrying on business in development of properties in partnership, were acquainted with the family of the plaintiff. During the year 1996, the defendants 2 and 3 approached the plaintiff with an offer to develop the suit schedule property and a Joint Development Agreement was entered into between the plaintiff and the first defendant. The partnership firm was represented by the second defendant on 17.05.1996. As per the said agreement, the first defendant had to develop the property and hand over three flats measuring in all about 1800 sq. ft. including the common area. Pursuant to the said agreement, the plaintiff had executed a General Power of Attorney in favour of the 3rd defendant on 22.05.1996. The plaintiff also signed a necessary papers and affidavits as required by the defendants for obtaining planning permission for demolition of the existing structure and for putting up new construction. The vacant possession of the suit property was handed over to the defendants along with Original Sale Deed dated 15.11.1969 and the Revenue documents. It was agreed between the parties that the construction is to be completed within a period of 18 months and three flats will have to be handed over to the plaintiff.

2.3. As per the specifications set out in the agreement, the defendants were required to put up construction using standard building materials and the defendants were also answerable to any claim relating to damages or compensation arising as a result of any injury or death to any workman, invitee or other persons arising out of and in the course of the construction of the building. The plaintiff would further plead that the defendants have put up constructions in violation of the sanctioned plan and by using sub standard materials. Eventually during September 1998, the entire building which was in the process of construction collapsed. This happened when the plaintiff was in United States of America visiting her relatives. Since the entire building collapsed, the remaining part of the building was also demolished and the land was kept vacant. Upon her return, the plaintiff lodged a Police Complaint against the defendants and the defendants under took to settle all the claims and return back the land to the plaintiff. Inasmuch as the defendants did not settle the claims and put the plaintiff in possession of the property. The plaintiff was constrained to file an Original Petition in OP No.210 of 2000, before the Hon'ble State Consumer Disputes Redressal Commission, Chennai, against the defendants and others.

2.4. Before the State Consumer Disputes Redressal Forum, the third defendant filed a detailed version, which was adopted by defendants 1 and 2. The fact that the building collapsed was admitted by the defendants, but it was claimed that it was due to unforeseeable circumstances. It is also stated that the defendants had settled the claims of the purchasers of about 2440 sq.ft. of undivided share in the land. The defendants would further contend that they had paid an advance of Rs.3,65,000/- to the plaintiff and they were ready to restore possession to the plaintiff, if only the plaintiff came forward to return the said sum of Rs.3,65,000/- with interest. The defendants had also raised an objection that the agreement between the parties, namely, the Joint Development Agreement dated 17.05.1996, contained an Arbitration Clause. Since the whole issue involved cancellation of documents and restoration of possession to the plaintiff, the plaintiff was advised that the State Consumer Disputes Redressal Commission, is not the appropriate forum which could grant her reliefs claimed by her. Upon such advice, the plaintiff sought to leave to withdraw the complaint with liberty to work out her rights before appropriate Civil Court.

2.5. The State Consumer Disputes Redressal Commission, by its order dated 18.03.2011 permitted the plaintiff to withdraw the complaint with liberty to claim exclusion of the time taken in prosecuting the said complaint under Section 14 of the Limitation Act. The Power of Attorney executed in favour of the third defendant was also cancelled. It is in this back drop, the plaintiff has come forward with the above suit seeking the aforesaid reliefs.

3. The suit is resisted by the defendants contending that the suit is barred by limitation. According to the defendants, the building collapsed in the year 1998 and the suit filed in 2014, seeking recovery of possession as barred. It is also claimed by the defendants that the defendants had paid a total sum of Rs.3,65,000/- to the plaintiff being 1/3rd of the actual cost of the flats that were to be provided to her and therefore, according to the defendants, they would be entitled to 1/3rd of the extent of the land equivalent to 1128.92 sq. ft. out of 3340 sq.ft. Therefore, according to the defendants, it is only the balance of 2211.08 sq.ft. that belonged to the plaintiff. On the above contentions, the defendants sought for dismissal of the suit.

4. Upon a consideration of the pleadings of the parties, the following issues were framed for determination in the suit.

1. Whether the plaintiff is entitled to declaration of title over the suit property?

2. Whether the plaintiff is entitled to damages for use and occupation at Rs.25,000/- P.M. as future damages?

3. Whether the Joint Development Agreement dated 17.05.1996, confers any right on the defendants to a share in the property?

4. Whether the suit is barred by limitation?

5. Whether the plaintiff would be entitled to exclude the time taken in prosecution of the proceeding before the said Consumer Dispute Redressal Forum, Chennai, in computing the limitation for the present suit?

6. Whether the defendants are entitled to 1/3rd share in the suit schedule property by virtue of the

Joint Development Agreement?

7. To what other relief parties are entitled to?

Additional Issue:

5. Considering the pleadings and the arguments advanced by both the counsels the following additional issue is framed, while disposing of the suit, both the counsels have been heard on the additional issue also.

> *Whether the plaintiff is bound to refund a sum of Rs.3,65,000/- received by her from the defendants*?

6. At trial, the plaintiff was examined herself as P.W.1 and Exs.P1 to P12 were marked. The third defendant was examined as D.W.1. No documents have been produced on the side of the defendants.

7. I have heard Mr.K.V.Sundararajan, learned counsel appearing for the plaintiff and Mr.S.Ambalavanan, learned counsel appearing for the respondents.

Issues Nos.1, 3 and 6:

8. These issues are taken up together since they involve a common issue regarding the title of the plaintiff to the property and the claim of the defendants that they are entitled to 1/3rd share in the property. The title of the plaintiff of the entire property is not in dispute. In fact the defendants had entered into an agreement with the plaintiff on 17.05.1996, agreeing to develop the property and put the plaintiff in possession of three flats measuring about 1800 sq. ft. The said Joint Development Agreement is marked as Ex.P2. A perusal of Ex.P2 would show that the defendants had agreed to put up construction of residential apartments in the suit property at their own cost and hand over three apartments measuring about 1800 sq. ft. to the plaintiff. Clause II of the agreement recites that the consideration for the development agreement dated 17.05.1996 is the construction and handing over of three residential apartments to the plaintiff.

9. Pursuant to the said agreement, the plaintiff had also executed a

Power of Attorney dated 22.05.1996, which was marked as Ex.P3, enabling the defendants to sell undivided share in the property in favour of the intending purchasers. It is not in dispute that the plaintiff had handed over vacant possession of the property to the defendants and the defendants had also commenced construction and completed a substantial portion of the same, when the building collapsed during September 1998. The construction agreement, as such, does not create any interest in immovable property in favour of the defendants, all that the defendants were to do is to develop the property construct residential apartments and put the plaintiff in possession of three residential apartments measuring about 1800 sq.ft.

10. Clause II of the agreement provides that the owner shall execute and register a Deed of Power of Attorney in favour of the third defendant, enabling him to sell undivided shares of land described in Schedule "B" out of the "A" Schedule land to the developer or to their nominee/nominees. While Schedule "A" refers to the entire property, Schedule "B" relates only to 2440 sq.ft. of undivided share of land from and out of the property

described in “A” Schedule. A perusal of Schedule “A” property as described in the agreement dated 17.05.1996 would disclose that the total extent of property is 3340 sq.ft.

11. The combined effect of the development agreement dated 17.05.1996 and the Power of Attorney dated 22.05.1996 would be that the defendants are authorised to sell an extent of 2440 sq.ft. undivided share in the land along with a proportionate constructed area utilising the Power of Attorney dated 22.05.1996. Even in her proof affidavit, P.W.1 has clearly set out the terms of the agreement. While it is the contention of the plaintiff that the defendants were not authorised to sell any of the apartments that were reserved to be allotted to the plaintiff, the defendants would submit that pursuant to an understanding, the defendants had paid a sum of Rs.3,65,000/- to the plaintiff towards a portion of the value of the apartment to be constructed towards her share. What has been paid by the defendants is only 1/3rd of the total consideration for the three apartments that were to be allotted to the plaintiff. Even in the written statement, the defendants have stated that a sum of Rs.3,65,000/- represents 33.80% of

the total value of the three flats that were to be allotted to the plaintiff, which works out to Rs.10,80,000/-. Therefore, what has been paid by the defendants is only 1/3rd of the value of the apartments that were to be allotted to the plaintiff. Admittedly, the building collapsed when the construction was in progress and neither the plaintiff nor the defendants were able to derive any advantage out of the Joint Development Agreement dated 17.05.1996.

12. Mr.K.V.Sundararajan, learned counsel appearing for the plaintiff would submit that a reading of Exs. P2 and P3, namely, the Joint Development Agreement and the Power of Attorney, would conclusively show that the defendants do not acquire any right over the property and they cannot seek partition of the property. According to him, all that was agreed between the parties was only a Simple Development Agreement, wherein, the plaintiff had authorised the defendants to develop the property at their cost, sell a portion of it and put the plaintiff in possession of three flats measuring about 1800 sq. ft. in all. Therefore, according to Mr.K.V.Sundararajan, the defendants would never get any right or interest

in the property subject matter of the suit by virtue of the Joint Development Agreement and Power of Attorney.

13. Though Mr.S.Ambalavanan, learned counsel appearing for the defendants would contend that since the defendants have paid a sum of Rs.3,65,000/- which represents 33.80% of the total value of the three apartments that were agreed to be handedover, by the defendants to the plaintiff, the defendants would be entitled to a proportionate undivided share in the land, he is unable to substantiate his claim by any evidence either written or oral. On the contrary, the plea of the defendants that they have paid a sum of Rs.3,65,000/- to the plaintiff and therefore, they would be entitled to the proportionate undivided share in the land is not backed by any material to show transfer of interest in immovable property. In effect the claim of the defendants is that a right or interest in immovable property has been created in their favour for the value of Rs.3,65,000/-. Any transfer of immovable property for value of Rs.100/- or upwards will have to be a way of registered instrument.

14. Admittedly, the only registered instrument namely, the Power of Attorney dated 22.05.1996 does not convey any property in favour of the defendants. The other documents being unregistered will not have the effect of conveying/creating an interest in immovable property in favour of the defendants. Even in cross-examination of P.W.1, it has been suggested that she had filed a suit to extract money from the defendants without repaying the sale consideration. She also denied the suggestion that she can claim only portion of land proportionate to the Flats allotted to her.

15. In the proof affidavit filed by D.W.1, it is stated that the three flats that were allotted to the plaintiff were sold to three purchasers at the rate of Rs.300/- per sq.ft. and a total sum of Rs.3,65,000/- collected from the said purchasers was paid to the plaintiff. It is also further stated that the total cost of the three flats allotable to the plaintiff, under the Joint Development Agreement for Rs.10,80,000/- at Rs.600/- per sq.ft. and they had paid a sum of Rs.3,65,000/- out of the said sum of Rs.10,80,000/-. Even in the proof affidavit of D.W.1, it is stated that the defendants were liable to pay a

further sum of Rs.7,15,000/- to the plaintiff. D.W.1 would further aver in the proof affidavit that he offered to pay a sum of Rs.7,15,000/- to the plaintiff, but the plaintiff did not agree to that and went before the State Consumer Disputes Redressal Commission. D.W.1 would however claim that the plaintiff is entitled to 66.20% of the land and the defendants are entitled to 33.80% of the land.

16. During cross-examination D.W.1 has admitted that he has constructed 11 flats though he had obtained a planning permission for 4 flats each measuring not more than 3000 sq. ft. He would also admit that the entire building was demolished by the Corporation, after the building collapsed. He has specifically admitted the contents of the version filed by him, before the State Consumer Disputes Redressal Commission. To a specific question based on the statement in the version filed before the State Consumer Disputes Redressal Commission, the 3rd defendant as D.W.1 has answered that he agreed to receive a sum of Rs.3,65,000/- with interest. He would also admit that he has not sent a reply to Ex.P11 Notice, by which the plaintiff offered to pay 6% interest on the said sum of

Rs.3,65,000/-.

17. An analysis of the oral and documentary evidence available on record would show that the defendants were only entrusted with the job of developing the suit property, put the plaintiff in possession of three flats and sell the remaining portion of the undivided share in the land along with the constructed area to the third parties. Though the defendants would claim they had sold the flats constructed to various third parties, no documents have been produced by them to prove such sales have been effected by him. On the other hand, the encumbrance certificate which has been marked as Ex.P10, shows that there has been no encumbrance over the property during the relevant period.

18. Once the ownership of the plaintiff over the property is admitted, it is for the defendants to show that there was some kind of a transfer of any interest in their favour. There is nothing on record to show such transfer and therefore, I am constrained to conclude that the plaintiff is the absolute owner of the entire property as of today and that the defendants

will not get any right to any portion of the property under Exs.P2 and P3.

19. In the light of the above conclusion, Issue No.1 is answered in favour of the plaintiff concluding that the plaintiff is entitled to a declaration of title over the suit property and Issue Nos.3 and 6 are answered against the defendants, holding that the defendants do not acquire any right over any portion of the property, by virtue of the Joint Development Agreement, marked as Ex.P2 and the Power of Attorney, marked as Ex.P3.

<u>Issue Nos.4 and 5</u>:

20. These issues are taken up together, inasmuch as, both these issues relate to the question of limitation. The building collapsed sometime in September 1998 and the plaintiff approached the State Consumer Disputes Redressal Commission, by filing a complaint on 08.09.2000. On 18.03.2011, the State Consumer Disputes Redressal Commission, passed an order under Ex.P8, which reads as follows:

"The learned counsel for the petitioner has filed a memo seeking permission to withdraw the

O.P. itself, that an opportunity to approach the competent Civil Forum (SIC). Memo restored (SIC). The petitioner is permitted to withdraw the case and an opportunity is given to the complainant to agitate the case before the proper forum if necessary, claiming exemption under Section 14 of the Limitation Act as available. No order as to costs in this petition."

21. Mr.S.Ambalavanan, learned counsel appearing for the defendants would submit that the plaintiff can only exclude the period during which the proceedings were actually pending before the State Consumer Disputes Redressal Commission, i.e. from 08.09.2000 to 18.03.2011. He would also submit that the reliefs sought for before the State Consumer Disputes Redressal Commission is different from the relief that is sought for by the plaintiff in the preset suit. Therefore, the plaintiff cannot invoke the benefit of Section 14 of the Limitation Act.

22. Contending contra Mr. K.V.Sundararajan, learned counsel appearing for the plaintiff would submit that under Article 65 of the Limitation Act, limitation for a suit for recovery of possession commences only from the date on which the possession of the defendants become adverse to that of the plaintiff. Relying upon the portion of the statement made in the version filed before the State Consumer Disputes Redressal Commission, which reads as follows:

> *"14. This opposite party further submits that since the opposite parties 1 to 5 have no intention to restart the construction as requested by the complainant the complainant is entitled to take back the land at any point of time by returning the advance amount of Rs.3,65,000/- together with interest and instead of returning the said amount praying for compensation and damages as mentioned in the complaint is not maintainable."*

Mr.K.V.Sundararajan, learned counsel would submit that this is a clear admission of the title of the plaintiff by the defendants. Therefore, the plaintiff would have a period of 12 years at least from the date on which the version was filed before the State Consumer Disputes Redressal Commission, to file a suit for recovery of possession. It is seen that the version was filed before the State Consumer Disputes Redressal Commission, on 27.05.2004, therefore, according to Mr.K.V.Sundararajan, the present suit filed on 17.03.2014 is well within time. It is the further contention of the Mr.K.V.Sundararajan, that in view of the order of the State Consumer Disputes Redressal Commission, dated 18.03.2011, the plaintiff would be entitled to exclude the period from 08.09.2000 to 18.03.2011 i.e., from the date on which the complaint in OP No.210 of 2000 was filed on the date on which it came to be disposed. If that period is excluded then the suit filed by the plaintiff within time.

23. In order to avail the benefit of Section 14, the plaintiff is not required to show that the relief sought for is exactly the same as sought for in the prior proceeding. Mr.K.V.Soundararajan, learned counsel would submit that the language used in Section 14 particularly the words

> "*Where the proceeding relates to the same matter in issue and is prosecuted in good faith*"

would show that the statute, namely, the Limitation Act does not require the reliefs sought for in both the proceedings must be the same.

24. I have considered the submissions of the learned counsel on either side on the effect of Section 14 as well as on the effect of the admission made in the version filed before the State Consumer Disputes Redressal Commission. I am inclined to agree with the contentions of the learned counsel appearing for the plaintiff, inasmuch as, the language of Section 14 does not support the contentions of Mr.S.Ambalavanan, learned counsel appearing for the defendants. Even assuming that the plaintiff would not be entitled to exclude the period taken in prosecuting the complaint before the State Consumer Disputes Redressal Commission, as rightly contended by MR.K.V.Sundrarajan, in view of the specific admission of the title of the plaintiff by the defendants in the version filed before the State Consumer Disputes Redressal Commission, on 27.05.2004, the suit

filed on 17.03.2014 is well within time. Therefore, both the Issue Nos.4 and 5 are answered in favour of the plaintiff against the defendants.

Issue No.2:

25. This issue relates to claim for damages by the plaintiff. The suit property is admittedly a vacant land and the defendants have not derived any income from the suit property. Even during the pendency of the proceedings before the State Consumer Disputes Redressal Commission, the defendants have offered to handover the possession of the property to the plaintiff provided she agrees to pay back a sum of Rs.3,65,000/- with interest. The plaintiff had not made use of that opportunity may be that the plaintiff was out of possession. The fact that the plaintiff is out of possession alone would not entail her to claim damages unless she proves actual damages. She handed over the property as the vacant land to the defendants and the property still remains vacant land, in fact because of the pendency of the proceedings it is the plaintiff who has been immensely benefited because the value of the property had gone up several times between 1996 and today.

Additional Issue:

26. It is the case of the defendants that they had paid a sum of Rs.3,65,000/- to the plaintiff which represents 33.80% of the value of the flats that were to be allotted to her under the Joint Development Agreement. The fact remains that the flats were not allotted to the plaintiff. The total value of the three Apartments at Rs.600/- per sq.ft. is about Rs.10,80,000/- even as per the written statement of the defendants. The remaining amount i.e., Rs.7,15,000/- was not paid over to the plaintiff. This is also admitted by the third defendant in his cross-examination as D.W.1 and also in the version filed before the State Consumer Disputes Redressal Commission. The plaintiff also admits receipt of a sum of Rs.3,65,000/- from the defendants. The plaintiff is bound to refund any pecuniary advantage obtained by her out of the transaction, when she seeks to rescind the transaction and recover the possession of the property from the defendants.

27. Even though the defendants have not filed a Cross-objection

claiming a sum of Rs.3,65,000/-, I find that the plaintiff is bound to repay the said sum of Rs.3,65,000/- along with reasonable interest, inasmuch as, she had advantage with the money for all these years. The exact date of payment of Rs.3,65,000/- is not available on record, but the payment of Rs.3,65,000/- is an admitted fact. I am therefore, of the considered opinion that the plaintiff is bound to refund a sum of Rs.3,65,000/- with 12% interest from 01.10.1998 (this date is fixed in view of the fact that it is admitted case of the parties that the building collapsed in September 1998) till the date of decree and thereafter, at 6% till date of realisation.

28. In fine the suit is decreed:

a) Declaring the title of the plaintiff to the suit property.

b) Declaring that the Joint Development Agreement dated 17.05.1996 is null and void.

c) Declaring the Power of Attorney dated 22.05.1996 registered as document No.624 of 1996 is also null and void.

d) Directing the defendants to deliver all the Title Deeds in respect of the suit schedule property and on payment of a sum of Rs.3,65,000/- with interest at 12% per annum from 01.10.1998 till date of decree and thereafter at 6% per annum till date of payment, on such payment the defendants shall also deliver vacant possession of the suit property to the plaintiff. The suit regarding the claim for damages is stands dismissed.

In the peculiar facts of this case, I direct the parties to bear their own costs:

07.08.2019

jv
Index: Yes/No
Internet: Yes/No
Speaking order/Non Speaking order

List of Witnesses examined on the side of the plaintiff:

PW1 - Sasireka Satyanarayanan

List of Witnesses examined on the side of the Defendants:

DW1 – P.Elango

List of Exhibits marked on the side of the Plaintiff:

Sl. No.	*Exhibits*	*Description of Documents*
1	Ex.P1	Certified copy of the Sale Deed dated 05.11.1969
2	Ex.P2	The Original Memorandum of Agreemnt between the plaintiff and the first defendant
3	Ex.P3	Certified copy of the Power of Attorney
4	Ex.P4	The Police complaint dated 28.10.1998
5	Ex.P5	Certified copy of legal notice dated 05.09.2000
6	Ex.P6	Certified copy of petition in OP No.210 of 2000
7	Ex.P7	Certified copy of version by the third defendant dated 27.05.2004
8	Ex.P8	Xerox copy of adoption Memo dated 27.05.2004
9	Ex.P9	Certified copy of order dated 18.03.2011 in State Consumer Dispute Redressal Forum
10	Ex.P10	Xerox copy of the Encumbrance Certificate dated 24.08.2010
11	Ex.P11	Office copy of the legal notice with returned cover and acknowledgment cards
12	Ex.P12	Notice to respondents returnable by 30/10/2014

List of Exhibits marked on the side of the Defendants: Nil

jv **07.08.2019**

To
The Sub Assistant Registrar,
Original Side,
High Court, Madras.

R.SUBRAMANIAN,J.

jv

Pre Delivery Judgment
C.S.No.500 of 2014

07.08.2019