

**Reserved on : 13.11.2019**

**Delivered on : 16.12.2019**

**A.No.6914 of 2019 in CS.No.535 of 2019**

**K.KALYANASUNDARAM.,J**

This application has been filed by the defendants 1 to 3 in C.S.No.535 of 2019 under Order 7 Rule 11 of CPC to reject the plaint.

2. The brief facts of the case would run thus:

The suit in C.S.No.535 of 2019 is instituted praying for mandatory injunction directing the defendants 1 to 4 to specifically perform the terms of the Memorandum of Understanding, dated 16.03.2015 and permanent injunction restraining the defendants 1 to 4, their men, successors in interest etc. or any person claiming through them in any manner subdividing the schedule mentioned property by metes and bounds and maintain the same as per the composite plan granted by the 7th defendant dated 02.05.2002.

3. According to the plaintiff, the fourth defendant was the original owner of the property comprised in Survey Nos.328/2, 256/2, 327/1, 325/1, 325/2, 325/3, and 329 in Velachery Village measuring an extent of 6.86 acres. The first defendant approached the fourth defendant to develop the said property.

The third defendant was the Managing Director of the first defendant and he was personally involved in the entire transaction and promised for completion of the project. A memorandum of understanding was entered into between the defendants 1 and 4 on 28.03.2001, in and by which, the fourth defendant agreed to sell the undivided share of the entire extent of 6.86 acres to the prospective purchasers. Thereupon, the fourth defendant, applied for planning permission from the seventh defendant for construction of a project consisting of 1 block of ground plus 8 floors for office purpose and 8 blocks of ground plus 9 floors for residential purpose in the entire extent of 6.86 acres.

4. It is the case of the plaintiff that based on the direction of the defendants 1 and 3, the fourth defendant applied for grant of composite plan by reconstituting the entire property into a single one by executing reconstitution deed amalgamating the entire land falling under 3 pattas in the names of different owners to that of one person. On 07.01.2002, the Housing and Urban Development Department granted approval for construction of multi-storied building. The CMDA granted planning permission by a letter dated 02.05.2002. The Corporation of Chennai has also issued building plan permit. The plaintiff would claim that planning permission for the entire extent of property was a single and composite one based on the reconstitution

deed. The total extent of land involved in the project is 2,98,822 sq.ft. and a gift deed was executed on 05.03.2002 in favour of the seventh defendant for an extent of 29,916 sq.ft. towards OSR land. The plaintiff would further state that even before obtaining planning permission, the defendants 1 and 3 entered into a sale-cum-construction agreement for undivided share in the land and built-up area with all prospective purchasers, in which, the suit schedule property was an integral part of the sale.

5. The grievance of the plaintiff is that when the sale deeds were executed and registered by the fourth defendant to the members of the petitioner-Association, survey No.329 was not included in the schedule of properties. After completing the construction of the flats, possession was handed over to the allottees between December 2002 and March 2003. Originally the flats were maintained by CEE DEE YES Property Service Private Ltd. a Company floated by the second defendant till October 2010. Subsequently, it was closed and maintenance was handed over to the Cee Dee Yes Associates, which maintained the apartment complex till October 2014, when the same was handed over to the plaintiff Association. Only thereafter, the members of the plaintiff-Association became aware of the fact that in their registered sale deeds there are serious anomalies including excess

registration by the defendants and non-inclusion of S.No.329. Thereafter, continuous negotiations had taken place between the plaintiff and the defendants to resolve the issue and a Memorandum of Understanding (MOU) was entered into on 16.03.2015. Thereby, the defendants agreed to transfer the title of the suit property in favour of the plaintiff-Association. After the MOU, there were no disputes and when the plaintiff insisted to compliance of the terms of the MOU in 2017, dispute arose.

6. The plaintiff would allege that in the interregnum the suit property was purchased by the CEE DEE YES Property Service Private Ltd. on 06.06.2005. A part of the land in Survey No.329 was subjected to acquisition proceedings and the same was challenged by the second defendant in a Writ Petition. The plaintiff filed an application to implead themselves as party to the respondent. The defendants filed counter affidavit, wherein they denied the performance of the agreement and stated that the MOU dated 16.03.2015 has been cancelled. It is the case of the plaintiff that the Division Bench in W.A.No.154 of 2016, observed that the dispute between the plaintiff and the defendants in respect of MOU dated 16.03.2015 cannot be decided in the appeal, and a liberty was given to the plaintiff to enforce its rights under the MOU in a manner known to law. Hence, the present suit.

7. The defendants 1 to 3 have come up with this application to reject the plaint on the following grounds;-

a) the first defendant constructed 412 flats in S.Nos.256/2, 325/1, 2, 3, 327/1, and 328/2. The sale deeds were executed between 2002 and 2014, but they do not relate to the suit property in S.No.329. Land in S.No.329 is classified as Mixed Residential Zone, but the plaintiff's land is in Residential Zone. Hence, the plaintiff cannot claim right over the land in S.No.329.

b) the third defendant is not the owner of the suit schedule property and hence, the MOU dated 16.03.2015 does not enable to transfer any part of the property mentioned in the schedule to the plaintiff and the MOU does not create any cause of action in respect of the suit claim.

c) MOU is dated 16.03.2015 and the present suit was filed in June 2019 to enforce the terms of the MOU, which is clearly barred by limitation.

d) Section 17 of the Tamil Nadu Apartment Ownership Act 1994 bars the present suit.

8. A Counter affidavit has been filed by the respondent denying and disputing the case of the applicants.

8 a) It is the case of the respondent that the applicants have reconstituted the entire property lying in several survey numbers for the purpose of getting planning permission by executing a deed of reconstitution. Thereafter, the Government granted a single plan for the entire extent including the land in S.No.329. It is further stated that in the gift deed, S.No.329 is also included. That apart in all the 412 sale agreements, S.No.329 has been mentioned in A Schedule and while B Schedule describes the undivided share of the land. Therefore, after issuance of planning permission on the basis of reconstitution deed, subdividing the land and registering the same is illegal and contrary to the planning permission given by the CMDA, which amounts to an act of fraud and this issue of fraud can be decided only after trial.

8 b) All the documentation of the property was done by the third applicant / third defendant as Chairman of the Group of Companies. The MOU was entered into by the third defendant by representing the entire Cee Dee Yes Group. A resolution was passed in the board meeting of CEE DEE YES Property Service Private Ltd. on 25.06.2010, in which, it is mentioned that the third applicant as custodian of the property is authorised to execute necessary

deeds for transfer of property to the plaintiff Association. Further an agreement for sale dated 25.06.2010 has been entered into between the third applicant and the CEE DEE YES Property Service Private Ltd. for transfer of the right in favour of the petitioner-Association. In order to avoid technical plea, an application has been filed to implead the Company CEE DEE YES Property Service Private Ltd. as one of the party in the suit, hence, on the ground of non-joinder of necessary party, the suit cannot be struck off.

8 c) Insofar as limitation, MOU dated 16.03.2015 was terminated on 11.01.2017, in between communications were exchanged and in an e-mail in 2016, the applicants herein have agreed to act as per the MOU. Hence, the plaintiff has limitation to file the suit till 10.01.2020, therefore the suit filed in 2019 is not barred by limitation.

8 d) Section 17 of the Tamil Nadu Apartment Ownership Act does not bar the right of Association to seek for any relief, as the plaintiff Association is a party to the MOU dated 16.03.2015.

9. Heard Mr.R.Thiyagarajan, learned Senior Counsel appearing for M/s.N.Premkumar, learned counsel for the applicants and Mr.S.Ramesh,

learned counsel for the respondent and perused the materials available on record.

10. The learned Senior Counsel appearing on behalf of the applicants would urge that admittedly, S.No.329 in Velachery Village was originally belonged to M/s.Standard Fire Works Limited / 4th defendant. The said Company got a plan approved by CMDA in respect of the S.No.329 and other survey numbers and in the approval granted on 14.09.2001, the S.No.329 is shown as Mixed Residential Zone and the remaining area is shown as Primary Residential Zone. The first defendant constructed 412 flats in the Primary Residential Zone comprising of S.Nos.328/2, 327/2, 256/2, 325/1, 2 and 3 and the land on which, the said flats have been constructed do not include the S.No.329. Hence, the sale deeds executed in favour of the members of the plaintiff do not include S.No.329. That apart, the owners of the apartment shall be entitled to undivided interest in common areas and facilities in the percentage specified in the deed of apartment. As per Section 3 (h) of the Tamil Nadu Apartment Ownership Act, the common areas and facilities would mean that the land on which the building is located and it does not extend to other portion of the land.

11. It is next contended that the MOU on the basis of which, the suit has been filed was admittedly entered into between the third applicant and the plaintiff Association. Since the plaintiff admits that the original owner the fourth defendant sold the suit property to CEE DEE YES Property Service Private Ltd, the MOU signed by the third defendant does not confer any right to the plaintiff to file the present suit. The sale agreement dated 25.06.2015 relied on by the plaintiff does not support the case of the plaintiff.

12. It is the contention of the learned Senior Counsel that the plaintiff entertained suspicion as early as on 13.07.2015 with regard to the transfer of the land in favour of the plaintiff, but filed the suit only in June 2019, which is clearly a time barred limitation. In the order passed in W.A.No.154 of 2017, no leave was granted for institution of the present suit. He further added that the date of reconstitution produced by the plaintiff is a forged document and plan approval cannot be granted for the Primary Residential and Mixed Residential Zone without reclassification into a single zone. That apart, Section 17 of the Tamil Nadu Apartment Ownership Act 1994 clearly states that the action by an Association can only be in respect of cause of action relating to common areas and facilities and the suit property does not represent the common area and facilities. Hence, the Association cannot maintain the suit at all.

13. Per contra, the learned counsel for the respondent would submit that the grounds raised in the application are factually and legally untenable. According to the learned counsel, the applicants 1 to 3 as builders defrauded the innocent purchasers after receiving consideration to the tune of several crores. It is the submission of the learned counsel that the suit has been laid in time and the bar in Section 17 would not apply to this case and the applicants have not made out any grounds to reject the plaint.

14. Heard the rival submissions and perused the materials available on record.

15. In the instant case, it is not disputed that the fourth defendant was the original owner of the property referred supra and by the MOU dated 28.03.2001, the first defendant agreed to develop the said property having an extent of 6.86 acres. It is equally not disputed that the defendants 1 and 3 had entered into an agreement with the prospective purchasers, in which, the lands of the fourth defendant including that of S.No.329 was incorporated. It is the case of the plaintiff that after the reconstitution of the entire properties, a composite plan was approved by the CMDA and the members of the plaintiff-

Association have an undivided share in S.No.329, but in their sale deeds, it was left out.

16. The further case of the plaintiff is that the third applicant / defendant was acting as the Chairman of the CEE DEE YES Property Service Private Ltd. and he entered into an MOU on 16.03.2015 agreeing to transfer the properties in favour of the plaintiff. It is also stated that the owner of the property, viz., CEE DEE YES Property Service Private Ltd., which is one of the group Companies of the third defendant, authorised the third defendant to execute the necessary deeds to transfer the suit property in favour of the plaintiff-Association. Though the same was confirmed in the last communication in the year 2016, however, in 2017, the third defendant had cancelled the MOU.

17. It is the case of the applicants that there was no reconstitution of the property by the fourth defendant as alleged and the deed of reconstitution produced by the plaintiff is a forged one. It is also contended that even though the third defendant had entered into an MOU on 16.03.2015, he was not the owner of the suit property. Further there was no proper authorisation by the owner viz., CEE DEE YES Property Service Private Ltd. and hence, no relief can be granted to the plaintiff on the basis of the MOU dated 16.03.2015.

18. A perusal of records would reveal that it is not specifically denied by the defendants that the survey number in dispute was not included in the sale agreements. It is also not disputed that the survey number was included in the gift deed executed in favour of the local body.

19. The learned Senior Counsel appearing for the applicants by placing reliance on the decision of the Hon'ble Apex Court in the case of **Raghwendra Sharan Singh vs. Ram Prasanna Sing (Dead)** reported in 2019 2 CTC 823 would urge that the suit is barred by limitation. In the said decision, a registered gift deed was executed in the year 1981. After lapse of 20 years, a suit was filed for partition and after receipt of summons in the suit, another suit in 2003 was filed for declaration declaring that the defendant acquired no title or possession on the basis of the gift deed. While dealing with those facts, the Hon'ble Apex Court has held that the subsequent suit is liable to be struck off on the ground of limitation.

20. But in the case on hand, though the sale deeds had been executed in favour of the members of the plaintiff in the year 2002-04, admittedly MOU was entered into in the year 2015 agreeing to convey the property in favour of

the plaintiff-Association. The plaintiff is also relying on the communications between the parties in support of their case that the third defendant agreed to transfer the land, however in 2017, MOU entered into between the parties in the year 2015 was cancelled. It is relevant to note that the present suit is filed, not based on the sale deeds of the year 2003, but to enforce the right based on the MOU of the year 2015. Therefore, I am of the opinion that the decision is factually distinguishable and does not help the case of the applicants. Considering the facts stated supra, in my opinion, at this juncture, no finding can be arrived at to hold the suit is barred by limitation.

21. It is to be seen that 3(h) of Tamil Nadu Apartment Ownership Act gives wider meaning to the definition "common areas and facilities". Moreover, the plaintiff is a party to MOU, dated 16.03.2015, so, whether section 17 of the Act would apply to the case on hand is a question of fact, which can be decided after trial.

22. It is settled law that the plaint can be rejected under Order 7 Rule 11 if the conditions enumerated in the said provisions are fulfilled. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. On entire meaningful reading of the plaint, if it

is found that the suit is vexatious and meritless, the Court shall exercise its power under Order 7 Rule 11.

23. In the light of the above facts, I am of the view that the applicants have not made out any ground to reject the plaint. In that view, the application fails and the same is dismissed. However, this Court does not want to make any comment on the merits and demerits of the case.

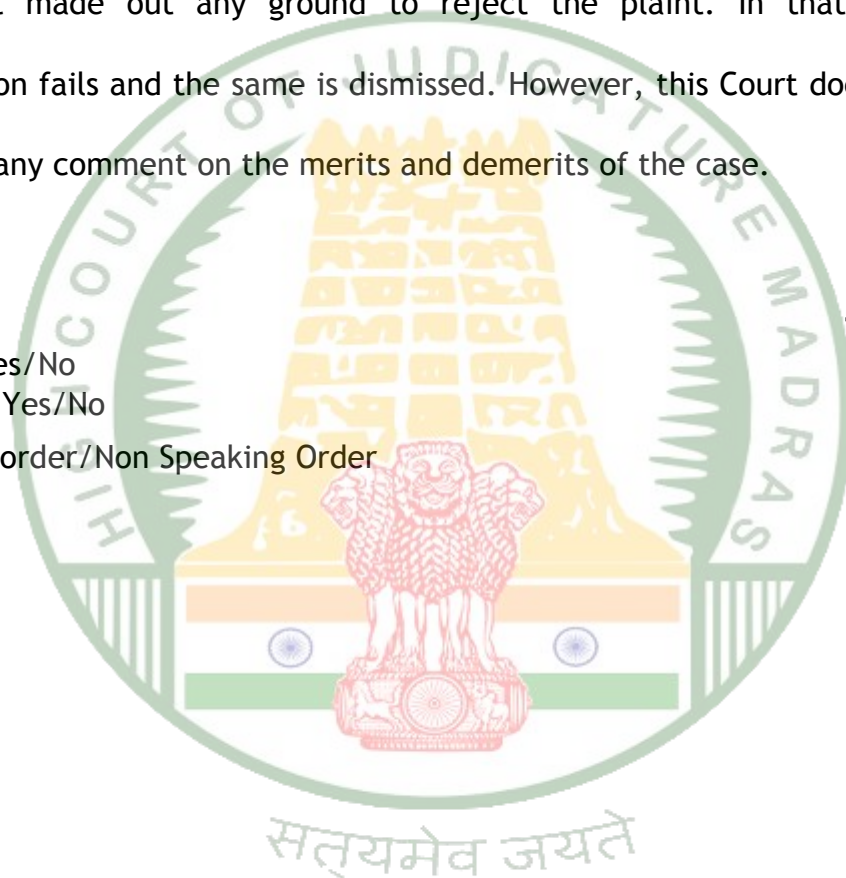
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Index : Yes/No

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Speaking order/Non Speaking Order

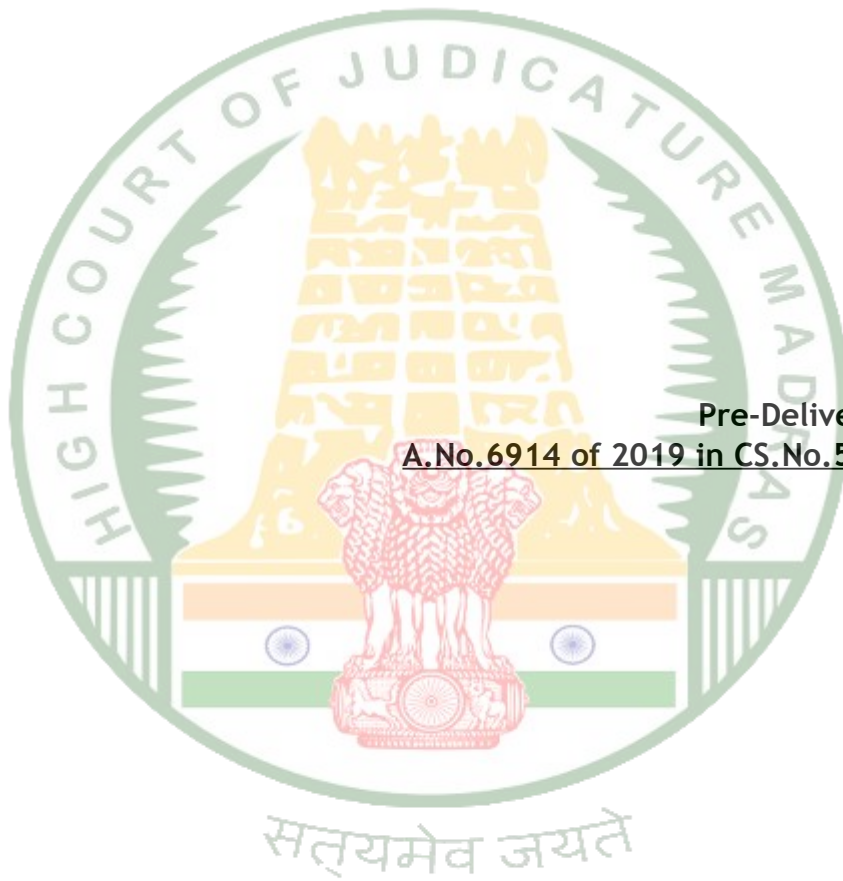
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