

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice C.SARAVANAN

O.S.A.No.345 of 2017
and
C.M.P.No.22434 of 2017

1.V.Krishnamoorthy
2.Raja K.Moorthy ... Appellants

Vs

1.M/s.Varna Homes Pvt. Ltd.,
rep. by its Managing Director
M.Chellappa
2.M.Chellappa
3.C.Sujatha
4.S.Sathish
5.A.M.Ganesan
6.C.Rashmi ... Respondents

Appeal preferred under Order XXXVI Rule 1 of O.S. Rules r/w
Clause 15 of Letters Patent against the order and decree dated
05.09.2017 made in A.No.3678 of 2016 in C.S.No.477 of 2016.

A.NO.3678/2016 in C.S.No.477/2016 prayer in

Application praying that this Hon'ble Court be pleased to
direct Respondents 1 & 2 to furnish security for the sum of
Rs.4,50,87,560/- being the amount claimed in the suit to the
satisfaction of the Hon'ble Court failing which order Attachment
of suit B schedule property which is morefully described in the
judge's summons pending disposal of the suit.

For Appellants .. Mr.T.B.Baskaran

For Respondents.. Mr.R.Thiagarajan for R1
No appearance for R2 to R6

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal is preferred by the appellants, who are the plaintiffs in the suit. The suit is filed for recovery of money. The appellants are the land owners as against defendants 1 and 2 being the promoters. The case of the appellants is that contrary to the development agreement, developed plots have been sold by respondents 1 and 2 in favour of their kith and kin viz., respondents 3 to 6. Accordingly, an application was filed, seeking attachment before judgment. The said application was dismissed by the learned single Judge. Hence the present appeal.

2.Learned counsel appearing for the appellants would submit that even in the communications between the parties viz., appellants and respondents 1 and 2, the claim of the appellants is accepted. However, a plea is sought to be taken as if with respect to some other transaction, some amount is due from the appellants to respondents 1 and 2. As per the contract, such a plea can never be sustained in the eye of law. As there is a further alienation coupled with the fact that deeds have been executed in favour of kith and kin of respondents 1 and 2, the appeal will have to be allowed.

3.Learned counsel appearing for the first respondent has submitted that the properties have already been alienated and it is for respondents 3 to 6 to resist the application filed.

4.Despite the vakalat having been filed on behalf of respondents 3 to 6, there was no representation on their behalf on the earlier occasions. Recording the above, the matter stands posted today. Unfortunately, even today, there is no representation for respondents 3 to 6.

5.We do find some force in the submission made by the learned counsel appearing for the appellants. Prima facie, respondents 1 and 2 cannot deny the payment, taking umbrage under some other transaction between the parties, after accepting their liabilities. In any case, this is a matter for trial. However, the allegation made that transactions have been effected in favour of the kith and kin of respondents 1 and 2 has not been seriously denied or disputed especially by respondents 3 to 6. We also find that respondents 3 to 6 are the family members of respondents 1 and 2.

6.In such view of the matter, though a larger relief has been sought for, we deem it appropriate to grant an order of injunction restraining respondents 3 to 6 from alienating or encumbering the properties, which is the subject matter of the application till the disposal of the suit. The original side appeal stands ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mmi

To

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

+1cc to Mr.T.S.Baskaran, Advocate sr.39517
+1cc to Mr.P.Thiagarajan, Advocate sr.39522

O.S.A.No.345 of 2017

nr 24/06/2019

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