

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

C.R.P.Nos.3543, 3548 and 3549 of 2019
and C.M.P.Nos.23248, 23266 & 23273 of 2019

1.S.Veera Ragavan
2.S.Gopalasubramaniyan (a) Ravi
3.S.Akila
4.S.Seethalakshmi ...Petitioners/Petitioners/
Defendants in all the CRPs

-Vs-

1.M/s.Vishwa Keerthi Housing Enterprises
Partnership Firm, rep.by its Partners
W.R.Muralidharan, R.Kalyanasundaram
No.19, Ramanujakooda Street
Choolaimedu, Chennai 600 094.
2.W.R.Muralidharan
3.R.Kalyanasundaram ...Respondents/Respondents/
Plaintiffs in all the CRPs

Prayer in CRP 3543/2019 : Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 13.09.2019 passed in I.A.No.1 of 2019 in O.S.No.6528/2018 on the file of the XVII Additional City Civil Court, Chennai.

Prayer in CRP 3548/2019 : Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 13.09.2019 passed in I.A.No.1 of 2019 in O.S.No.6529/2018 on the file of the XVII Additional City Civil Court, Chennai.

Prayer in CRP 3549/2019 : Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 13.09.2019 passed in I.A.No.1 of 2019 in O.S.No.6520/2018 on the file of the XVII Additional City Civil Court, Chennai.

For Petitioners in all CRPs: Mr.N.A.Nissar Ahmed
For Respondents in all CRPs: Mr.S.Sundar (Caveator)

O R D E R

These Civil Revision Petitions are filed against the fair and decree order dated 13.09.2019 passed in I.A.No.1 of 2019 in O.S.No.6528/2018, I.A.No.1 of 2019 in O.S.No.6529/2018 and I.A.No.1 of 2019 in O.S.No.6520/2018 respectively on the file of the XVII Additional City Civil Court, Chennai.

2. The very short facts which are required to be noticed for the disposal of these revision petitions is that, before the trial Court, the respondents had filed the respective suits for a prayer to perform the contract of joint development agreement dated 06.10.1999 and supplementary agreement dated 10.10.2001.

3. Invariably, the revision petitioners in these revision petitions herein, are the owners of the property in question and they entered into a Joint Venture agreement with the respondents and as per the Joint Venture agreement, property had to be developed by the respondents and in this regard, after some time of executing the agreement, there had been a dispute between the parties, with the result it seems that, the Power of Attorney executed by the revision petitioners / owners to and in favour of the respondents / promoter seems to have been canceled, as against which though litigation has been filed, it seems the issue has become final and therefore the cancellation of the Power of Attorney has been confirmed.

4. At that juncture, the respondents / promoter filed these suits with the aforesaid prayer as against the revision petitioners / defendants and when these suits have been admitted and are pending before the trial Court, the revision petitioners / defendants had come forward to file the present applications in each of the suit under Order VII Rule 11 of CPC to strike off the plaint on the ground that, the agreement referred to above, even though styled as 'Joint Venture Agreement' is nothing but an 'agreement for specific performance' and therefore, there is a limitation to agitate the issue arising out of an agreement for specific performance and since the said limitation period is over, all the suits are barred by limitation and on this ground, the said suits should be rejected under Order VII Rule 11 of CPC.

5. The said applications filed in each of the suits, since had been decided against the revision petitioners by the impugned order dated 13.09.2019 by the Court below, aggrieved over the same, the revision petitioners have filed the present revisions.

6. Heard Mr.Nissar Ahmed, learned counsel for the revision petitioners and Mr.S.Sundar, learned counsel for the respondents, who entered appearance through caveat.

7. It is the case of the revision petitioners that, the agreement in question is nothing but an agreement for specific performance under which certain acts has to be undertaken by the respondents / plaintiffs, and certain acts to be undertaken by the defendants, according to the respondents / plaintiffs, the petitioners / defendants have not been undertaken certain acts and therefore, on that pretext, since these suits have been laid for the relief of enforcement of the contract, it can only be construed as a suit for specific performance and therefore, definitely limitation for filing of such suits would apply. Admittedly, the agreement is of year 1999 and supplementary agreement is of the year 2001 and these suits have been admittedly laid only in the year 2018. Therefore, only on these lines and specifically on the ground of limitation, these applications under Order VII Rule 11 CPC were filed, which were not properly considered by the trial Court and have been rejected, and the same requires interference from this Court.

8. However, Mr.S.Sundar, learned counsel for the respondents submits that, it is not at all an agreement for sale, and it is nothing but a Joint Venture agreement, where the revision petitioners / defendants are the owners of the property and the respondents / plaintiffs are the promoters of the property. Under the said agreement, flats have to be constructed and as per the various terms of the agreement, both parties have to perform certain acts as has been enumerated in the Joint Venture agreement and in this regard, according to the learned counsel for the respondents / plaintiffs, the revision petitioners / defendants failed to execute certain acts as per the contract i.e., Joint Venture agreement, it became necessitated for the respondents / plaintiffs to approach the civil Court to file the said three civil suits with the prayer stated therein.

9. Learned counsel for the respondents / plaintiffs would further submit that, since it is a Joint Venture agreement and the revision petitioners / defendants being the owner of the property, though had originally executed the Power of Attorney, since have subsequently withdrawn the same, thereby the lawful right of the respondents / promoters accrued pursuant to the joint venture agreement, has been taken away or defeated. Therefore, the respondents / promoters have got every right to agitate the issue before the Civil Court in the manner known to law and accordingly all these suits were filed.

10. I have considered the said submissions made by the learned counsel for both sides and also perused the materials placed before this Court.

11. I have given a cursory reading of the agreement dated 06.10.1999 and supplementary agreement dated 10.10.2001. The recital of the said agreements, prima facie discloses that, it is a joint venture agreement between the parties, on one side the owner of the land and on the other side the promoter of the land to promote houses / units. There are certain clauses available in the agreement, under which, both the parties have to act upon and in this regard, one of the condition, which has been heavily relied upon by the learned counsel for the revision petitioners is, clause No.18, which reads as follows,

"The owner reserves the right to revoke the power of attorney, if the project is not completed within the period of two years from the date of agreement."

12. In this context, the learned counsel for Petitioners / Defendants submitted that, pursuant to clause No.18, since the promoter is not able to complete the project as stipulated therein, the revision petitioners / owners of the property had revoked the power already executed in favour of the plaintiffs / promoter, as against which though issue had been raised by filing the suits, where it is decided in favour of the owner of the land / revision petitioners. Therefore, once the power of attorney has already been revoked, which has been confirmed in a Court of law, the respondents / plaintiffs lost its right to enforce the contract and therefore the time prescribed under Clause 18 of the agreement is the essence of the contract, which was invoked by the revision petitioners / owners of the land. Therefore, the point of limitation raised by them before the Court below ought to have been accepted.

13. The said submission made by the learned counsel for the revision petitioners may not be correct or justifiable for the simple reason that, in default of Clause 18 of the agreement as referred to above, the owner has got every right to revoke the power already executed in favour of the promoter. The civil consequence of the revocation of the power of attorney by the owner, is nothing but the promoter being the power of attorney holder cannot meddle with the property ie., the units promoted for his share as per the joint venture agreement. Apart from this civil consequence, it does not cause any other civil consequence, especially in respect of the alleged violation of contract conditions by either party, as that is the issue to be decided only by the trial Court after full fledged trial, for which the suits have been laid.

14. Moreover, the agreement in question, in the considered opinion of this Court, cannot be treated as agreement of sale ie., for specific performance. Therefore, the present suits filed by the respondents / plaintiffs cannot be treated as suits for specific performance. In that view of the matter, the point raised by the revision petitioners before the Court below that the suits are barred by limitation and based on which, the applications filed by them, which are the subject matter before this Court in these revisions ought to have been allowed, in the considered opinion of this Court, are undeserved to be considered under Order VII Rule 11 of CPC to strike off the plaint.

15. Therefore, this Court feels that, there is no infirmity or perversity or erroneousness in the orders impugned in this case, as the learned Judge has considered these aspects in proper perspective and accordingly rejected the respective applications filed under Order VII Rule 11 C.P.C., Hence the same need not be interfered with.

16. In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed. However, the observations made in this order are only for the purpose of disposing of these Civil Revision Petitions and therefore, the same shall not stand in the way of deciding the civil suits before the trial Court.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

KST
To

The XVII Additional City Civil Court, Chennai.

+3 Ccs to Mr.N.A.Nissar Ahmed, Advocate sr 92866, 92867, 92868
+2 Ccs to Mr.S.Sundar, Advocate sr 92311

C.R.P. (PD) Nos.3543, 3548 & 3549 of 2019

VBA (CO)
SP(30/07/2020)