IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

**O.A.No.242 of 2020**

M/s Sri Srinivasa Constructions,
Plot No.35, Street No.03,
Sagar Co-operative Housing Society, Road No.2,
Banjara Hills, Hyderabad. ... Applicant

Vs.

1. Shyamala Kumari,
M-74, 31st Cross Street, Besant Nagar,
Chennai 600 090.

2. Mahendra Shanmuganathan,
No.112, Curtin Ave North Wahroonga,
NSW 2076, Sydney, Australia.

3. Viayendra Shanmuganathan
M-74, 31st Cross Street, Besant Nagar,
Chennai 600 090.

4. K.R.Attaullah Basha,
No.36, Indira Nagar, Chennai 600 020. ... Respondents

**Prayer**: Original Application filed under Order XIV Rule 8 of the O.S. rules read with Section 9 of the Arbitration and Conciliation Act, 1996 to grant an order of injunction restraining the respondents 1 and 3 from in any manner acting on the basis of the rectification deed dated 08.05.2020, registered as document No.2576 of 2020, with the SRO, Neelankarai contrary to the terms of the Joint Development Agreement dated 20.09.2012 and the consequential supplementary agreement dated 16.11.2017, pending disposal of the arbitration proceedings.

For Applicant : Mr.Praveen S.Kumar

For Respondents : Mr.C.R.Rukmani for R1

Mr. K.V.Babu for R2

Mr.A.Muthukumar for
M/s Srividhya Lakshmi for R3



***ORDER***



This application has been filed for injunction restraining the respondents 1 and 3 from in any manner acting on the basis of the rectification deed dated 08.05.2020, registered as document No.2576 of 2020, with the SRO, Neelankarai contrary to the terms of the Joint

Development Agreement dated 20.09.2012 and the consequential supplementary agreement dated 16.11.2017, pending disposal of the arbitration proceedings.

2. **The brief facts of application is as follows**:-

The applicant has entered into a Joint Development Agreement (herein after referred to as JDA) with the first and fourth respondent on 20.09.2020 in respect of 45.5 cents in survey No.138/2, owned by the first respondent and 63 cents in survey No.138/1, owned by the 4th respondent. In the above JDA, it was agreed by the parties that 40% of super built up area in the proposed residential complex has to be handed over the owners (i.e. first 16.8% to the first respondent and 23.2% to the fourth respondent) and the applicant will be entitled to 60% of the land.



2.1. Thereafter, the first respondent had executed a settlement deed dated 23.03.2017 in favour of her son, settling her share of the property being 45.5 cents. The above said settlement deed was confirmed by a declaration deed dated 03.07.2017 executed by the 2nd and third defendants. Pursuant to the above settlement, the 2nd and third defendants had also executed power attorney deeds dated 12.03.2018 and 07.09.2018. Besides, they had also executed supplementary agreement dated 16.11.2017.

2.2. Based on the above contracts, subsequent contracts and power of attorney, executed by the real owner, the applicant has developed the area, as per the original JDA. When the matter stood as, the first respondent had executed a rectification deed dated 08.05.2020, in terms of which, she had virtually revoked the settlement deed dated 23.03.2017 and has retained 60% share of the property to herself and settled 40% alone to the 3rd respondent. On account of the said rectification being reflected in the Encumbrance certificate, the applicant will not be able to deal with their share of the property and execute further sale deeds. Further the rights of the property transferred in favour of the 2nd respondent by the original settlement deed, was unsettled and affected. More over the 3rd respondent has sent several mails threatening to act in a manner affecting the interest of the applicant and all flat buyers.

2.3. The parties are agreed to the terms and conditions of the Joint Venture Agreement and also supplementary agreement. Now the dispute is with regard to the settlement and the area of the land originally transferred in favour of the 2nd respondent. The applicant has invoked the arbitration clause and has nominated a sole arbitrator. Pending arbitration proceedings, unless the rights of the applicant under the agreements are protected, , they will be put to irreparable loss and hardship. Hence, this application.

3. The first respondent has filed a counter affidavit, wherein it is stated that though Joint Venture Agreement has executed in the year 2002, till 2007, the agreement was not acted upon and the applicant has not taken any steps to complete the construction and handed over the built up area of 40% undivided share consisting of 21 flats and 23 car parking, as agreed.



3.1. Initially only 17 premium flats were provided under the JDA and later the applicant in collusion with the 2nd respondent seemed to have converted them into non-premum flats in order to facilitate them and by way of gratitude, the applicant in turn has given the 2nd respondent one additional flat. Further it is the contention of the first respondent that the applicant is not prevented from entering into any transaction to sell his 60% UDS and hence, he cannot prevent the third respondent from exercising his rights in respect of 40% UDS in the land measuring about 45.5 cents. Hence prayed for dismissal of the application.

4. The third respondent filed counter affidavit, wherein it is contended that the rectification deed dated 08.05.2020 is a matter between the first respondent and her two sons viz. the second and third respondent herein and hence, the same cannot be questioned by the applicant, as it does not infringe its rights. On the other hand, the rectification deed deals with only 40% of 45.5 cents in S.No.138/2 earmarked for the first respondent under JDA dated 20.09.2012 and for the other 60%, which was given to the applicant, a deed of power executed by the first respondent is not affected. Thus, neither the settlement deed dated 23.03.2017 nor rectification deed dated 08.05.2020 affects the rights of the applicant. Neither the first

respondent nor the 3rd respondent cancelled the power deeds executed by them empowering the applicant to sell 60% UDS in the land. Therefore, the applicant is not an aggrieved person and he cannot be said to have any dispute to refer the same to the arbitration.

4.1. The second respondent has already filed a suit in O.S.No.152 of 2020 before the Additional District Judge, Chengalpattu and sought an interim order and hence, the applicant cannot interfere in the interse dispute between the sons and prayed for dismissal of the application.

5. The learned counsel appearing for the applicant submitted that the Joint Development Agreement was entered into between the applicant and the first the fourth defendant on 20.09.2012. Thereafter, the property has been transferred by way of settlement deed dated 23.03.2017 by the first respondent in favour of her two sons and it was confirmed by the declaration deed dated 03.07.2017. The second and third defendants have also executed supplementary agreement and power of attorney deeds in favour of the

applicant and on such agreements, the applicant constructed the flats, as agreed in the Joint Development Agreement. However, on 08.05.2020, a deed of rectification was executed by the first respondent in favour of the third respondent, wherein she has dealt with the subject matter of the property, already transferred in favour of her sons by way of settlement. Hence, if the rectification deed is acted upon, the applicant will be put to irreparable loss and hardship and therefore, prayed to grant interim injunction.

6. The learned counsel appearing for the first respondent mainly contended that the rights of the applicant in respect of 60% of UDS has not been affected by the rectification deed, which deals in respect of 40% of the shares originally held by the first respondent. The power of attorney executed by the first and second respondent in favour of the applicant has also not been cancelled. Therefore, the applicant cannot have any grievance over the rectification deed. This application has been filed only at the instigation of the 2nd respondent and hence, there is no prima facie case in favour of the applicant and prayed for dismissal of the application.

7. The learned counsel appearing for the third respondent vehemently submitted that the rectification deed is a matter dispute between the parties. 60% of UDS given to the applicant is not disputed in the rectification deed and hence, there cannot be any injunction as against the respondents. The 2nd respondent in collusion with the applicant had filed a suit before the I Additional District Judge, Chengalpattu and having failed in obtaining interim orders, now filed this application seeking an order of interim relief under the pretext of referring the matter under arbitration. There is nothing to refer the dispute before the arbitration, since the rights namely 60% UDS given to the applicant has not been affected and hence prayed for dismissal.

8. Heard both sides. I have perused the materials on record.



9. The learned counsel appearing for the 2nd respondent advanced his submissions in support of the applicant and mainly contended that the rectification deed is amounts to cancelling the settlement deed, originally executed in favour of the 2nd respondent

and such approach not only affected the right of the applicant but also the 2nd respondent. The Joint Development Agreement was executed in respect of the entire 45.5 cents to construct the flats in the entire area. Though 60% of UDS has been executed in favour of the applicant, remaining 40% retained by the owners. Such view of the matter, taking right already vested under the Joint Development Agreement virtually not only affected the applicant but also the 2nd respondent.

10. There is no dispute with regard to the Joint Development Agreement executed between the applicant as one part and the first and 4th respondent as another part on 20.09.2012. Originally an extent of 45.5 cents was owned by the first respondent and she had entered into the agreement referred to above for developing the property along with the 4th respondent and as per the JDA, 60% of UDS is meant for the applicant and the 40% of the super built up area is meant for owners. After execution of such document, it appears that supplementary agreement has also been executed between the parties on 20.10.2012. That apart, power of attorney deed also executed by the owners namely first and 4th respondent in favour of the applicant

enabling him to obtain planning permission etc.

11. It appears that on 23.03.2017, the first respondent had executed a settlement deed in favour of her two sons and settled the property measuring to an extent of 45.5 cents in Survey No.138/2, which is the subject matter of the Joint Development Agreement property, executed by her. Apart from the above property, she has also dealt with some other property in the above settlement deed. Inview of the transfer of ownership in favour of the second and third respondents, the sons of the first respondent have also executed supplementary agreement dated 16.11.2017 in favour of the applicant, which makes it clear that they had agreed to the terms of the Joint Development Agreement, which were to be performed by the first respondent. It is also specifically agreed between the parties that the Joint Development Agreement dated 20.09.2012 has been assigned in favour of the second and third respondents. The second supplementary agreement executed between the parties makes it clear that the Joined Development Agreement stood assigned in favour of the applicant and the second and third respondents were agreed to all the terms and conditions originally

agreed upon between the parties and it was also assigned that the parties are bound by the same terms and conditions. Apart from the second supplementary agreement, the second and third respondents, being the owners, have also executed an independent power of attorney in favour of the applicant, enabling him to deal with the property. Thereafter, it appears that the first respondent, who is the mother of the second and third respondents has executed rectification deed, wherein, she has dealt with the property and restricted to 60% share, originally agreed under the Joint Development Agreement and remaining 40% has been rectified and states that it should go to the third respondent. Though it is not affected the 60% of the UDS allotted to the applicant, the original transfer, which took place by way settlement deed in favour of her sons, is affected by this rectification deed and virtually it amounts to cancellation of the earlier settlement.



12. The facts remains that the entire 45.5 cents in survey No.138/2 is the subject matter of the Joint Development Agreement. Only by developing the property into flats in that entire area, 60 : 40 ratio shall be worked out. Therefore, without putting the entire property

into the development, 60 : 40 ratio, as agreed between the parties is unpredictable. Therefore, if the 40% is taken away by way of rectification deed, certainly, the applicant will be put into serious injury in working out the ratio, as agreed between them, as per the Joint Development Agreement.

13. Having regard to the nature of the claim, and as there is no dispute with regard to the Joint Development Agreement between the parties, this court is of the view that the applicant has made out a prima facie case and balance of convenience is in its favour. It is also to be noted that if 40% is taken away, as mentioned in the rectification deed, it will in fact affect the rights of the one of the parties, and it cannot be done unilaterally, in law. Since there is a specific clause in the Joint Development Agreement to refer the matter before the Arbitrator, in the event of any dispute arose between the parties, and the parties are governed by the agreement, the parties necessarily has to go before the Arbitrator to resolve their dispute. Till such time, there shall be an order of interim injunction.

14. Accordingly, this application is allowed. It is for the applicant to initiate the arbitration proceedings, **within a period of three months from today** and till such time, there shall be an order of interim injunction. Failure to invoke the arbitration proceedings within three months, the order of injunction passed by this court stands vacated automatically, without any reference to this court.

07.09.2020

mst

**N.SATHISHKUMAR,J.**
mst



**Appln.242 of 2020**

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